

Exhibit 11

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY :
YATES, KEITH COLE, and :
NICHOLAS DIAZ, individually:
and on behalf of those :
similarly situated, :
Plaintiffs, :
VS. : No. 4:14-cv-1698
BRAD LIVINGSTON, in his :
Official capacity, ROBERTO :
HERRERA, in his official :
capacity, and TEXAS :
DEPARTMENT OF CRIMINAL :
JUSTICE, :
Defendants. :

ORAL AND VIDEOTAPED DEPOSITION OF
JACKIE L. BRANNUM
SEPTEMBER 16, 2015

ORAL AND VIDEOTAPED DEPOSITION of JACKIE L.

BRANNUM, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on September 16, 2015,
from 2:13 p.m. to 3:51 p.m., before PHYLLIS WALTZ, RPR,
CRR, Texas CSR, TCRR, Louisiana CCR, in and for the
State of Texas, recorded by machine shorthand, at the
Wallace Pack Unit, 2400 Wallace Pack Road, Navasota,
Texas, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto; that the deposition shall be read and signed
before any Notary Public.

A P P E A R A N C E S

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VIDEOGRAPHER:

Mr. Kevin Schaefer, Attorney General's Office

ALSO PRESENT:

Warden Robert Herrera
Mr. Derek Kammerlocher

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1 take them?

2 A. From 7:00 to 9:00, somewhere in that area.

3 Q. Do you take any of the cool-down showers?

4 A. Yes, sir.

5 Q. About how often would you say you take the
6 cool-down shower?

7 A. Just about every afternoon.

8 Q. So what time would that be?

9 A. From 7:00 to 9:00.

10 Q. 7:00 to 9:00. So you say you take that just
11 about every afternoon?

12 A. Yes, sir.

13 Q. And do you find that that kind of helps cool
14 you down at night?

15 A. Yes, sir.

16 Q. Now, after you take the cool-down shower, I
17 imagine you go back to your dorm?

18 A. Yes, sir.

19 Q. What kind of do you do just at night?

20 A. Mostly go to bed.

21 Q. Just go to bed, yes, sir.

22 Okay. So you've taken advantage of the
23 cool-down showers that are being offered, right?

24 A. Yes, sir.

25 Q. Now, do you drink water a lot?

1 A. Yes, sir.

2 Q. About how many cups of water -- how many times
3 a day do you drink water?

4 A. Well, I figured it up one time. I drank about
5 5 gallons a day.

6 Q. About 5 gallons a day. That's a lot of water.
7 I should probably be doing that. And so do you have
8 kind of a -- a cup or a bottle that you use?

9 A. Yes, sir.

10 Q. Okay. Is it kind of just like a normal water
11 bottle, like a 12-ounce water bottle?

12 A. Yes, sir.

13 Q. And so in your dorm B5, are there sinks you
14 can use to fill it up occasionally?

15 A. Yes, sir.

16 Q. So do you use those sinks when you need to?

17 A. Yes, sir.

18 Q. What other kind of water do you have on the
19 dorm?

20 A. We got a ice jug.

21 Q. And that's a ice jug in -- in the dorm?

22 A. It's -- yes, sir. In the catwalk there, sir.

23 Q. Okay. And that's filled with ice water?

24 A. Yes, sir.

25 Q. And how often do you use that ice cooler?

1 A. All -- just about all the time.

2 Q. And have you ever had any problems, you know,
3 getting water out of that ice jug?

4 A. It runs out every once in a while.

5 Q. Okay. So about how often would it -- do
6 you -- would you say it runs out?

7 A. Two or three times a day.

8 Q. And does it get refilled?

9 A. Yes, sir.

10 Q. And about, kind of how quickly would you say
11 it gets refilled?

12 A. Sometime it takes 30 minutes, sometime it
13 takes about two hours.

14 Q. Okay. But is that kind of a rare occurrence
15 for it to take longer?

16 A. Yes, sir.

17 Q. So, generally, it doesn't take very long to
18 get it filled back up?

19 A. No, sir.

20 Q. So you've -- have you ever had any problems
21 where you haven't been able to get water for long
22 periods of time?

23 A. Not lately, sir.

24 Q. Okay. And what do you mean by "not lately"?

25 A. Well, a year ago we did.

1 Q. Okay.

2 A. They only filled it up -- the jug once in the
3 morning, once at night.

4 Q. Okay. But right now it's pretty frequent?

5 A. Yes, sir.

6 Q. Okay. So you haven't had any problems, you
7 know, drinking your 5 gallons of water each day?

8 A. No, sir.

9 Q. Okay. Now, what else can a -- can you do to
10 help relieve yourself from the heat? What do you
11 personally do?

12 A. Most of the time, we line up to the craft
13 shop, take a T-shirt and get it wet, sit underneath the
14 fan.

15 Q. All right. So do you have a personal fan?

16 A. Yes, sir.

17 Q. And about how long have you had your personal
18 fan?

19 A. Since 2003 -- or '13.

20 Q. And so you use that fan quite frequently?

21 A. Yes, sir.

22 Q. And does that fan help you?

23 A. Yes, sir.

24 Q. And I've heard, like, some offenders take
25 their shirts or towels and wet them and put them in

1 Q. So like last year or this year?

2 A. Last year and this year.

3 Q. Okay. About how many times have you requested
4 to go to medical for heat-related issues?

5 A. I don't remember.

6 Q. Is it, like, one to five times, or are you
7 able to give me kind of a range of how many?

8 A. No, sir.

9 Q. Okay. Okay. Now, do you wear -- what kind of
10 clothing do you wear when you're in your dorm during the
11 summer?

12 A. T-shirt and gym shorts.

13 Q. Okay. And can you wear those in the dayroom
14 and your bunk? Where can you wear those?

15 A. Dayroom. Anywhere in the dorm.

16 Q. Okay. And does wearing, you know, lighter
17 clothing help you in the summer?

18 A. A little bit.

19 Q. Now, what other kind of posters are posted up
20 in the dorms regarding the heat?

21 A. Drink plenty of water.

22 Q. Any other kind of -- any other posters that
23 you can remem- -- remem- -- remember?

24 A. One in there telling you what your urine looks
25 like when you're dehydrated.

1 Q. When you were talked to about heat precaution,
2 kind of just give me a rundown of what they -- you would
3 be told.

4 A. They describe what the illness is and then
5 they didn't tell us to go to the infirmary or anything.
6 They said just sit down and drink plenty of water.

7 Q. Okay. Now, have you observed any inmates
8 going to the infirmary for heat-related issues?

9 A. Yes, sir.

10 Q. About -- and about how many times would you
11 say?

12 A. I don't remember, sir.

13 Q. Now, do you take -- do you take insulin or
14 anything of that nature?

15 A. Yes, sir.

16 Q. So you have to go to the medical facility for
17 that?

18 A. Yes, sir.

19 Q. And so how many times a day would you take
20 insulin?

21 A. Twice a day, sir.

22 Q. So you -- you're in and out of the infirmary
23 pretty much every day, correct?

24 A. Yes, sir.

25 Q. One minute, please.

1 Now, let's go back to kind of the chow hall.

2 How often -- do you try to go to the chow hall all -- as
3 much as you can?

4 A. Yes, sir.

5 Q. And have you ever had to -- have you ever
6 skipped any meals?

7 A. Yes, sir.

8 Q. About how often, would you say?

9 A. About once a month.

10 Q. And do you get to go to the commissary?

11 A. Yes, sir.

12 Q. Okay. Have you bought, you know -- what kind
13 of food do you buy from the commissary?

14 A. Mostly hygiene items.

15 Q. Okay.

16 A. And coffee.

17 Q. Hygiene items and coffee?

18 A. Yes, sir.

19 Q. Nothing else?

20 A. Pea soup.

21 Q. Okay. So do you buy any other food items from
22 the commissary?

23 A. Once in a while.

24 Q. Once in a while. Okay. Have you ever bought
25 water at the commissary?

1 A. Yes, sir.

2 Q. And do you kind of buy the individual water
3 bottles, or do you buy kind of bulk water?

4 A. Individual.

5 Q. Individual bottles?

6 A. Yes, sir.

7 Q. And are those bottles cold?

8 A. No, sir.

9 Q. Now, is there anything else from the
10 commissary that you kind of buy on a regular basis?

11 A. Stamps and that's -- that's about all I can
12 remember right off the bat that I most generally get.

13 Q. What was that?

14 A. That's what I most generally get.

15 Q. Okay. Now, do you ever go to the law library?

16 A. Very seldom, sir.

17 Q. And have you ever put in a request to the law
18 library and, you know, not been received for it?

19 A. No, sir.

20 Q. So have you ever been to the normal library?

21 A. Yes, sir.

22 Q. About how often would you say you go to the
23 normal library?

24 A. Very seldom.

25 Q. Now, are both -- is the law library air

1 THE STATE OF TEXAS :
2 COUNTY OF HARRIS :

3 I, PHYLLIS WALTZ, a Certified Shorthand Reporter, Texas
4 Certified Realtime Reporter, Registered Professional
5 Reporter, and Certified Realtime Reporter in and for the
6 State of Texas, do hereby certify that the facts as
7 stated by me in the caption hereto are true; that the
8 above and foregoing answers of the witness, JACKIE L.
9 BRANNUM, to the interrogatories as indicated were made
10 before me by the said witness after being first duly
11 sworn to testify the truth, and same were reduced to
12 typewriting under my direction; that the above and
13 foregoing deposition as set forth in typewriting is a
14 full, true, and correct transcript of the proceedings
15 had at the time of taking of said deposition.

16 I further certify that I am not, in any capacity, a
17 regular employee of the party in whose behalf this
18 deposition is taken, nor in the regular employ of his
19 attorney; and I certify that I am not interested in the
20 cause, nor of kin or counsel to either of the parties.

21 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the
22 30TH day of SEPTEMBER, 2015.

23 *Phyllis Waltz*

24 PHYLLIS WALTZ, RPR, CRR
25 TEXAS CSR, TCRR NO. 6813
Expiration Date: 12/31/15
LOUISIANA CCR NO. 2011010
Expiration Date: 12/31/15

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Exhibit 12

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY *
YATES, KEITH COLE, and *
NICHOLAS DIAZ, *
individually and on *
behalf of those *
similarly situated, *
Plaintiffs, *

VS. *

No. 4:14-cv-1698

BRAD LIVINGSTON, in his *
official capacity, *
ROBERTO HERRERA, in his *
official capacity, and *
TEXAS DEPARTMENT OF *
CRIMINAL JUSTICE, *
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF

KEITH COLE

AUGUST 26, 2015

ORAL AND VIDEOTAPED DEPOSITION of KEITH COLE,
produced as a witness at the instance of the Defendants,
duly sworn, was taken in the above-styled and numbered
cause on the 26th day of August, 2015, from 9:50 a.m. to
3:49 p.m., before JANE COPELAND, RMR, CRR, Certified
Shorthand Reporter and Notary Public in and for the
State of Texas, reported by Machine Shorthand, at the
offices of Wallace Pack Unit, 2400 Wallace Pack Road,
Navasota, Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or
attached hereto.

1 A. I can't tell you. I don't -- I don't have a
2 temp -- thermometer. I don't know.

3 **Q. Do you drink water during the day?**

4 A. Boy, I tell you what, like a elephant. Camel,
5 like a camel.

6 **Q. What -- how many glasses of water each day do**
7 **you drink?**

8 A. I make it a point -- I have a little container
9 that I -- if I'm not mistaken, I think it's 14 or 16
10 ounces. I try to drink at least ten of those every
11 single day religiously. And in the chow hall, I -- I
12 make it a point -- even after I finish my meals, I make
13 it a point to drink at least a half of pitcher of water
14 every single meal that I go to.

15 **Q. Now, is there wat -- then there's enough water**
16 **at the chow hall then to --**

17 A. Oh, ev -- we have never had a problem with
18 water in the chow hall. We've always had ice water in
19 the chow hall.

20 **Q. Do you buy any other kinds of drinks from the**
21 **commissary?**

22 A. I might buy one or two Cokes at -- when we go
23 to commissary, but I really don't drink a lot of Cokes
24 because of my diabetes.

25 **Q. Do you buy any other kind of drinks at the**

1 **commissary?**

2 A. Yes, ma'am. I buy these sports drinks that --
3 that -- that you have to add water to like most
4 offenders. One of them is a sports drink that replaces
5 the potassium and -- and -- and electrolytes into your
6 body, and it's a hundred percent vitamin C. I buy quite
7 a few of those because it's the type of thing that helps
8 rehydrate you. And I also buy little Hawaiian Punch
9 drinks. They're powdered, also. You add them to your
10 water.

11 **Q. All right. And do they have a -- any kind of**
12 **other items at the commissary that would assist you in**
13 **dealing with the heat?**

14 A. Well, ice cream, which I don't buy a lot of
15 because of my diabetes. They had popsicles for a few
16 minutes. I don't buy those at all because it's just
17 sugar and water. No, there's -- not -- not anything
18 that could immediately cool me down, no, not that I know
19 of, no.

20 **Q. Do you own -- did you buy an official pair of**
21 **TDCJ shorts?**

22 A. Yes, ma'am. I have two pair.

23 **Q. Okay. And do you wear those during the day?**

24 A. Every day.

25 **Q. Where all are you allowed to wear your shorts?**

1 A. The only place I'm allowed to wear my shorts is
2 in my cubicle on the dorm and I'm also allowed to wear
3 them in the dayroom. I -- I pretty much can wear them
4 anywhere I want to in my living area.

5 Q. Okay. And then what do you wear when you leave
6 your living area?

7 A. You have to put on this heavy white uniform
8 (indicating).

9 Q. All right. And you pointed to your offender
10 uniform, correct?

11 A. Yes, ma'am.

12 Q. And it's a white uniform?

13 A. Yes, ma'am.

14 Q. Okay. Do you take any other steps during the
15 summer with regard to the summer conditions?

16 A. When you say other steps, I'm -- I'm confused.

17 Q. Okay. That's good. I'm glad you told me that.
18 You said you drink what, eight to ten glasses of water a
19 day?

20 A. Yes, ma'am.

21 Q. You make an effort to do that. You buy the
22 special drinks from the commissary?

23 A. Yes, ma'am.

24 Q. You own two pair of shorts?

25 A. Yes, ma'am.

1 walk by every offender has a bottle -- drinking bottle
2 on their tables. You can easily verify what I'm saying.
3 The vast majority of them have these.

4 Now, the bottle I use is a barbecue sauce
5 bottle because it has a deal this big where you pour --
6 put the water in. So I'm able to get my water without
7 ever having to touch the faucet. See what I'm saying?

8 **Q. (BY MS. BURTON) Okay.**

9 A. So I -- yes, cups definitely need to be -- be
10 an option for us.

11 **Q. All right. So you're saying then in your dorm,**
12 **at least, there's not cups for the water?**

13 A. There's not cups in any of them.

14 **Q. And -- and how do you know that there's not**
15 **cups in any of them?**

16 A. I'm just assuming if we don't have them, nobody
17 else is going to have them.

18 **Q. Are you familiar with the posters that are**
19 **hanging around the unit that talk about how much water**
20 **to drink and what to do --**

21 A. Right. Those were put up after the lawsuit was
22 filed, yes, ma'am.

23 **Q. Okay. You're -- there were no posters prior to**
24 **the lawsuit?**

25 A. Oh, no, ma'am, none.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY *
YATES, KEITH COLE, and *
NICHOLAS DIAZ, *
individually and on *
behalf of those *
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VS. *

No. 4:14-cv-1698

BRAD LIVINGSTON, in his *
official capacity, *
ROBERTO HERRERA, in his *
official capacity, and *
TEXAS DEPARTMENT OF *
CRIMINAL JUSTICE, *
Defendants. *

REPORTER'S CERTIFICATION
DEPOSITION OF KEITH COLE
TAKEN AUGUST 26, 2015

I, JANE COPELAND, RMR, CRR, Certified
Shorthand Reporter and Notary Public in and for the
State of Texas, hereby certify to the following:

That the witness, KEITH COLE, was duly sworn
by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
CYNTHIA L. BURTON;

That a copy of this certificate was served on
all parties and/or the witness shown herein on

September 8, 2015.

I further certify that pursuant to FRCP No.
30(e)(2) that the signature of the deponent:


XXX was requested by the deponent or a party
before the completion of the deposition and that the

1 signature is to be returned within 30 days from date of
2 receipt of the transcript. If returned, the attached
3 Changes and Signature Page contains any changes and the
4 reasons therefor;

5 _____ was not requested by the deponent or a
6 party before the completion of the deposition.

7 I further certify that I am neither counsel
8 for, related to, nor employed by any of the parties in
9 the action in which this proceeding was taken, and
10 further that I am not financially or otherwise
11 interested in the outcome of the action.

12 Certified to by me this 2nd day of September,
13 2015.

14 
15 JANE COPELAND, CSR, RMR, CRR
16 Notary Public in and for the
17 State of Texas
18 Commission Expires: 4/29/2016

19 Business Address:

20 Integrity Legal Support Solutions
21 Firm Registration No. 528
22 3100 W. Slaughter Lane, Suite A-101
23 Austin, Texas 78748
24 (512) 320-8690
25 (512) 320-8692 (fax)

Exhibit 13

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY :
YATES, KEITH COLE, and :
NICHOLAS DIAZ, individually:
and on behalf of those :
similarly situated, :
Plaintiffs, :

VS. : No. 4:14-cv-1698

BRAD LIVINGSTON, in his :
Official capacity, ROBERTO :
HERRERA, in his official :
capacity, and TEXAS :
DEPARTMENT OF CRIMINAL :
JUSTICE, :
Defendants. :

ORAL AND VIDEOTAPED DEPOSITION OF
RICHARD ELVIN KING
SEPTEMBER 16, 2015

ORAL AND VIDEOTAPED DEPOSITION of RICHARD
ELVIN KING, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on September 16, 2015,
from 9:21 a.m. to 2:06 p.m., before PHYLLIS WALTZ, RPR,
CRR, Texas CSR, TCRR, Louisiana CCR, in and for the
State of Texas, recorded by machine shorthand, at the
Wallace Pack Unit, 2400 Wallace Pack Road, Navasota,
Texas, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto; that the deposition shall be read and signed
before any Notary Public.

1 A. Yes.

2 Q. -- during the summer months?

3 A. Yes, I drink -- I drink a lot of fluid most of
4 the time.

5 Q. About how much water would you say you drink
6 per day?

7 A. I don't know. Probably at least a gallon,
8 cup- -- two or three quarts, anyway.

9 Q. And when you drink water, do you have your own
10 bottle that you put the water in or your own cup? What
11 do you --

12 A. Yes, I have a little bottle just like that.
13 Mainly I just keep refilling it, yes.

14 Q. You're pointing to a water bottle that's on
15 the table?

16 A. Yes.

17 Q. So is it a --- do you know what size your
18 water bottle is?

19 A. I think it's 12 or 13 ounces.

20 Q. And it's a plastic water bottle?

21 A. Yes.

22 Q. And when you drink water out of your water
23 bottle, where do you get the water from?

24 A. We have water fountains, you know, hydrants.
25 There's water coolers that have ice and, you know, and

1 water in them.

2 Q. About how many times a day would you say you
3 fill up your water bottle with water, on average, during
4 the summer months?

5 A. Many. I -- I don't know. 12, 15. I drank
6 two since I've been up this morning, so...

7 Q. So you said you fill it 12 to 15 times a day?

8 A. Probably, yeah.

9 Q. And where are you filling it with water? You
10 said there's water fountains and water coolers. Where
11 are they located?

12 A. In the locations.

13 Q. In your dorm?

14 A. Yes.

15 Q. What about anywhere else that you fill your
16 water bottle up with water from?

17 A. In the craft shop we have, you know, water
18 cooler.

19 Q. So let's talk about the water coolers. You
20 said there's -- there's some in the craft shop?

21 A. There's -- well, it's an Igloo type of -- of
22 cool -- of cooler.

23 Q. And how many are in the craft shop?

24 A. Just -- just one.

25 Q. So you have one there and then there's some in

1 meal is over.

2 Q. But you said that's not most of the time,
3 though --

4 A. No.

5 Q. -- that's just sometimes.

6 Do you typically get enough water to drink
7 when you're at a meal in the chow hall?

8 A. Probably sufficient for most people, yes.

9 Q. Is it sufficient for you?

10 A. Most of the time not. I -- I -- I drink lots
11 of liquid.

12 Q. Have you ever complained that you need more
13 water while you're in the chow hall with your meals?

14 A. No.

15 Q. Have you ever requested a refill and they've
16 said no, you can't have one?

17 A. No.

18 Q. So, then, after dinner you said you would go
19 back to your dorm. And tell me what you said you do in
20 your dorm in the evenings.

21 A. I just -- just watch the news, if I get in in
22 time. Write a letter, read, wait for mail call, make a
23 phone call or two.

24 Q. What time of day is this, approximately?

25 A. Well, from 5:30 until 10:30 at night. After

1 I, RICHARD ELVIN KING, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4
5 RICHARD ELVIN KING

6 STATE OF T E X A S)
7 COUNTY OF _____)

8 Before me, _____, on
9 this day personally appeared RICHARD ELVIN KING, known
10 to me, or proved to me under oath or through
11 _____) (description of identity card or
12 other document)), to be the person whose name is
13 subscribed to the foregoing instrument and acknowledged
14 to me that they executed the same for the purposes and
15 consideration therein expressed.

16 Given under my hand and seal of office on
17 this, the _____ day of _____, _____.

18
19 NOTARY PUBLIC IN AND FOR THE
20 STATE OF TEXAS

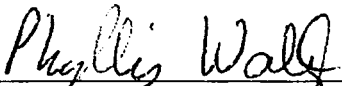
21 My Commission Expires: _____
22
23
24
25

1 THE STATE OF TEXAS :
COUNTY OF HARRIS :

2 I, PHYLLIS WALTZ, a Certified Shorthand Reporter, Texas
3 Certified Realtime Reporter, Registered Professional
Reporter, and Certified Realtime Reporter in and for the
4 State of Texas, do hereby certify that the facts as
stated by me in the caption hereto are true; that the
5 above and foregoing answers of the witness, RICHARD
ELVIN KING, to the interrogatories as indicated were
6 made before me by the said witness after being first
duly sworn to testify the truth, and same were reduced
7 to typewriting under my direction; that the above and
foregoing deposition as set forth in typewriting is a
8 full, true, and correct transcript of the proceedings
had at the time of taking of said deposition.

9 I further certify that I am not, in any capacity, a
10 regular employee of the party in whose behalf this
deposition is taken, nor in the regular employ of his
11 attorney; and I certify that I am not interested in the
cause, nor of kin or counsel to either of the parties.

12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the
13 30TH day of SEPTEMBER, 2015.

14
15 
16 PHYLLIS WALTZ, RPR, CRR
TEXAS CSR, TCRR NO. 6813
17 Expiration Date: 12/31/15
LOUISIANA CCR NO. 2011010
18 Expiration Date: 12/31/15

19 Integrity Legal Support Solutions
20 Firm Certification No. 528
3100 Slaughter Lane, Suite A-101
21 Austin, Texas 78748
(512) 320-8690
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24
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Exhibit 14

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY :
YATES, KEITH COLE, and :
NICHOLAS DIAZ, individually:
and on behalf of those :
similarly situated, :
Plaintiffs, :

VS. : No. 4:14-cv-1698

BRAD LIVINGSTON, in his :
Official capacity, ROBERTO :
HERRERA, in his official :
capacity, and TEXAS :
DEPARTMENT OF CRIMINAL :
JUSTICE, :
Defendants. :

ORAL AND VIDEOTAPED DEPOSITION OF
DEAN ANTHONY MOJICA
SEPTEMBER 3, 2015

ORAL AND VIDEOTAPED DEPOSITION of DEAN ANTHONY

MOJICA, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on September 3, 2015,
from 3:00 p.m. to 4:51 p.m., before PHYLLIS WALTZ, RPR,
CRR, Texas CSR, TCRR, Louisiana CCR, in and for the
State of Texas, recorded by machine shorthand, at the
Wallace Pack Unit, 2400 Wallace Pack Road, Navasota,
Texas, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto; that the deposition shall be read and signed
before any Notary Public.

1 A. No, I -- I've tried to self -- I guess, heal
2 myself by drinking more water, but I think it's for lack
3 of potassium. I don't really know.

4 Q. Did you buy any of the drinks at the
5 commissary that have electric- --

6 A. Yes.

7 Q. Okay. Let me finish my question.

8 A. I'm sorry.

9 Q. That's okay -- that have the electrolytes in
10 them?

11 A. Yes.

12 Q. Okay. And how much water do you drink during
13 the day?

14 A. Quite a bit.

15 Q. Could you give me an estimate of how many cups
16 of water?

17 A. At least two quarts.

18 Q. All right. And do you do anything else or
19 take anything else? We talked about the fan, the
20 showers, you drink water. Anything else that you do?

21 A. No.

22 Q. How often are you experiencing muscle cramps?

23 A. Maybe sometimes once a week and they usually
24 hit me at nighttime and sometimes once a week and
25 sometimes twice a week. You know, it just depends on, I

1 guess, whatever -- how -- how hot it gets over there
2 when I'm sitting in -- in -- in the -- the dorm.

3 **Q. Does it happen any other time of year?**

4 A. No, I don't have -- I don't have cramps during
5 the wintertime.

6 **Q. Is it warm there during the wintertime?**

7 A. No, it's cold.

8 **Q. All right. So what -- when you have those**
9 **cramps, do you drink more water then or --**

10 A. Yes, I do.

11 **Q. Okay. But have you had any dizziness or like**
12 **what happen --**

13 A. Yes.

14 **Q. Okay. When do you have that?**

15 A. Usually when I have the cramps, I'll -- I'll
16 get dizzy, feel nauseated. And at one point I feel --
17 I've thrown up before and -- but it's usually -- when I
18 have the cramps is when I feel -- I'm laying there on
19 the floor.

20 **Q. But it hasn't been serious enough that you**
21 **felt you should talk to the doctor?**

22 A. Well, I -- like I said, I just try to -- I'm
23 thinking maybe it's just -- if I drink more water, it'll
24 be all right, everything will be all right. And I'm
25 thinking maybe it's just because I'm getting older. I

1 Q. Okay. Do you agree that a person should take
2 care of themselves during the heat by drinking water and
3 getting in a cool place, if they need to?

4 A. I believe that they should, if it's available,
5 you know, if it's -- if it is available.

6 Q. So do they -- does a person have a personal
7 responsibility to help take care of themselves?

8 A. Depending on the -- I guess, depending on the
9 conditions. You know, I mean, there's some conditions
10 that you can't take care of yourself. You can't monitor
11 the heat or regulate the heat.

12 Q. But could -- but if they have access to water,
13 do they have a personal responsibility to drink water?

14 A. Yes, you do.

15 Q. And do they have a personal responsibility to
16 let someone know if they need to go somewhere and cool
17 off?

18 A. Yes.

19 Q. And do they have a personal responsibility to
20 seek medical attention, if necessary?

21 A. Yes.

22 Q. Now, are you currently on any medication?

23 A. No.

24 Q. Do -- other than your back, do you have any
25 other medical conditions that you're concerned about?

1 I, DEAN ANTHONY MOJICA, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

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5 _____
6 DEAN ANTHONY MOJICA

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STATE OF T E X A S)
COUNTY OF _____)

Before me, _____, on
this day personally appeared DEAN ANTHONY MOJICA, known
to me, or proved to me under oath or through
_____) (description of identity card or
other document)), to be the person whose name is
subscribed to the foregoing instrument and acknowledged
to me that they executed the same for the purposes and
consideration therein expressed.

Given under my hand and seal of office on
this, the _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS


My Commission Expires: _____

1 THE STATE OF TEXAS :
COUNTY OF HARRIS :

2 I, PHYLLIS WALTZ, a Certified Shorthand Reporter, Texas
3 Certified Realtime Reporter, Registered Professional
Reporter, and Certified Realtime Reporter in and for the
4 State of Texas, do hereby certify that the facts as
stated by me in the caption hereto are true; that the
5 above and foregoing answers of the witness, DEAN ANTHONY
MOJICA, to the interrogatories as indicated were made
6 before me by the said witness after being first duly
sworn to testify the truth, and same were reduced to
7 typewriting under my direction; that the above and
foregoing deposition as set forth in typewriting is a
8 full, true, and correct transcript of the proceedings
had at the time of taking of said deposition.

9 I further certify that I am not, in any capacity, a
10 regular employee of the party in whose behalf this
deposition is taken, nor in the regular employ of his
11 attorney; and I certify that I am not interested in the
cause, nor of kin or counsel to either of the parties.

12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the
13 18TH day of SEPTEMBER, 2015.

14
15 

16 PHYLLIS WALTZ, RPR, CRR
TEXAS CSR, TCRR NO. 6813
17 Expiration Date: 12/31/15
LOUISIANA CCR NO. 2011010
18 Expiration Date: 12/31/15

19 Integrity Legal Support Solutions
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3100 Slaughter Lane, Suite A-101
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Exhibit 15

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY :
YATES, KEITH COLE, and :
NICHOLAS DIAZ, individually:
and on behalf of those :
similarly situated, :
Plaintiffs, :
:
VS. : No. 4:14-cv-1698
:
BRAD LIVINGSTON, in his :
Official capacity, ROBERTO :
HERRERA, in his official :
capacity, and TEXAS :
DEPARTMENT OF CRIMINAL :
JUSTICE, :
Defendants. :

ORAL AND VIDEOTAPED DEPOSITION OF
FRED LEONARD WALLACE
SEPTEMBER 17, 2015

ORAL AND VIDEOTAPED DEPOSITION of FRED LEONARD

WALLACE, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on September 17, 2015,
from 9:12 a.m. to 2:25 p.m., before PHYLLIS WALTZ, RPR,
CRR, Texas CSR, TCRR, Louisiana CCR, in and for the
State of Texas, recorded by machine shorthand, at the
Wallace Pack Unit, 2400 Wallace Pack Road, Navasota,
Texas, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto; that the deposition shall be read and signed
before any Notary Public.

1 **spring?**

2 A. Summer.

3 Q. Do you remember what the temperature was that
4 day?

5 A. No, ma'am.

6 Q. When you went in and sought medical treatment,
7 did you go in and complain of the heat and feeling that
8 you were having problems related to heat?

9 A. No. I just told them I was sick.

10 Q. Okay. You mentioned dehydration. Do they
11 give you any instructions with regard to drinking more
12 water?

13 A. Yes.

14 Q. What do they tell you?

15 A. Drink water.

16 Q. That day and the -- say roughly the day before
17 you went in two years ago with these complaints and had
18 the low blood pressure, do you recall whether or not you
19 had been regularly drinking water?

20 A. Normally.

21 Q. You mean drinking like you normally do?

22 A. Yes.

23 Q. So what do -- how much do you normally drink
24 in a day? How much water or liquid do you take in?

25 A. Six, eight cups.

1 Q. So is that six to eight -- is that a cup,
2 you're talking about, like the --

3 A. Yes.

4 Q. -- an 8-ounce cup?

5 A. A cup. The cups that we have.

6 Q. So what cup do you have?

7 A. They're issued to us by the State. It's just
8 a standard cup.

9 Q. You said you typically drink about six to
10 eight of those a day?

11 A. Yes.

12 Q. And the day of these symptoms with the low
13 blood pressure, you drank about the same that day?

14 A. Yes.

15 Q. Did the medical staff tell you anything else
16 that you should do besides taking in more fluids?

17 A. No.

18 Q. And you said your diagnosis on that day was
19 what? What would you -- did you get a diagnosis? Did
20 they tell you what was wrong?

21 A. No.

22 Q. Did anyone tell you you had heat stroke or
23 heat exhaustion --

24 A. No.

25 Q. -- anything like that?

1 just felt better.

2 Q. Did they check to see if your hydration levels
3 were better at that time?

4 A. They never did check to see if my hydration
5 level were up or down. They don't have any method of
6 check hydration level.

7 Q. Nothing that you know of; is that fair?

8 A. That's fair.

9 Q. So you said your cramps were gone and you were
10 feeling better?

11 A. Yes.

12 Q. Did you have any pains at that time?

13 A. No.

14 Q. Did you have any complaints when you went back
15 in at 11:00 the next morning?

16 A. No.

17 Q. And what did the medical providers tell you in
18 the infirmary that next morning when you went in?

19 A. Continue to drink water.

20 Q. All right. And how long were you in the
21 infirmary that next morning?

22 A. Very short period of time.

23 Q. 10 minutes, 30 minutes, can you give us a
24 ballpark?

25 A. 10 minutes.

1 Q. -- a complaint to your officers that were in
2 your dorm and said, I need to go to medical?

3 A. Same thing.

4 Q. And did they promptly get you to the medical
5 infirmary?

6 A. Yes, ma'am.

7 Q. And any complaints about those officers and
8 their response to your complaints on the --

9 A. None at all -- none at all.

10 Q. Let's talk about when you got to the medical
11 infirmary a second time with these same complaints.

12 What did you tell the nurse or the person who saw you?

13 A. Same thing, I was having the problems.

14 Q. And did you make any complaints about the heat
15 at that time?

16 A. No.

17 Q. Do you recall what the temperature was then?

18 A. No.

19 Q. Do you recall the time of year it was?

20 A. Not really.

21 Q. And what kind of treatment did you get when
22 you went to the infirmary --

23 A. Drink --

24 Q. -- for the second time?

25 A. Drink water.

1 Q. Did they check your blood pressure?

2 A. Yes.

3 Q. And they told you it was high?

4 A. Yes.

5 Q. What blood pressure medications were you on at
6 that time?

7 A. I don't know the name of it. I really -- I
8 don't.

9 Q. Was it one or more than one?

10 A. It's the same one, as far as I know.

11 Q. So it's the same pill that you're currently
12 taking?

13 A. Yes, ma'am.

14 Q. Did they adjust your medications at all --

15 A. No.

16 Q. -- that second time?

17 A. No.

18 Q. If you can, wait until I'm through with the
19 question, just so we can --

20 A. Sorry.

21 Q. -- get an accurate -- thank you. No problem.

22 So other than drinking water, did they tell
23 you anything else that you needed to do?

24 A. No.

25 Q. At that time, the second incident, did you --

1 been in here.

2 Q. And where have you seen them taking
3 temperature measurements?

4 A. In the dorm, on the ceiling.

5 Q. Just on the ceiling --

6 A. No.

7 Q. -- or anywhere else?

8 A. On the ceiling is all I've seen.

9 Q. And do you know who it was that was doing it?

10 A. No, ma'am.

11 Q. Do you know how they were taking the
12 temperature readings?

13 A. Had some kind of a device that shot at the
14 ceiling.

15 Q. These posters that you said are put up
16 throughout the unit about heat and drinking water and
17 that sort of thing; is that correct?

18 A. Yes, ma'am.

19 Q. And you've read those, you said?

20 A. Yes, ma'am.

21 Q. Have you read the posters that give you
22 recommendations on what to look out for for heat-related
23 illnesses?

24 A. Yes, ma'am.

25 Q. And precautions to take to avoid problems with

1 the heat?

2 A. Yes, ma'am.

3 Q. Do you try to follow those precautions?

4 A. Yes, ma'am.

5 Q. Have you seen a poster that talks about you
6 can look at the color of your urine --

7 A. Yes, ma'am.

8 Q. -- to see if you're properly hydrated?

9 A. Yes, ma'am.

10 Q. And do you ever do that?

11 A. Yes, ma'am.

12 Q. Have you ever had an occasion where you saw
13 the color of your urine that indicated to you maybe you
14 have a problem with hydration?

15 A. No.

16 Q. On those three occasions that we were talking
17 about earlier when you went to medical, do you know
18 whether or not you checked your urine anywhere before or
19 after you -- any of those times?

20 A. I don't know.

21 Q. Do you recall if the medical department took
22 any urine samples from you on any of those three visits?

23 A. They did not.

24 Q. Have they ever taken urine samples from you in
25 the medical department?

1 I, FRED LEONARD WALLACE, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4
5 FRED LEONARD WALLACE

6 STATE OF T E X A S)
7 COUNTY OF _____)

8 Before me, _____, on
9 this day personally appeared FRED LEONARD WALLACE, known
10 to me, or proved to me under oath or through
11 _____) (description of identity card or
12 other document)), to be the person whose name is
13 subscribed to the foregoing instrument and acknowledged
14 to me that they executed the same for the purposes and
15 consideration therein expressed.

16 Given under my hand and seal of office on
17 this, the _____ day of _____, _____.

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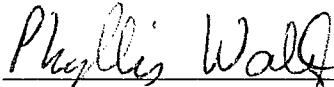
My Commission Expires: _____

1 THE STATE OF TEXAS :
COUNTY OF HARRIS :

2 I, PHYLLIS WALTZ, a Certified Shorthand Reporter, Texas
3 Certified Realtime Reporter, Registered Professional
Reporter, and Certified Realtime Reporter in and for the
4 State of Texas, do hereby certify that the facts as
stated by me in the caption hereto are true; that the
5 above and foregoing answers of the witness, FRED LEONARD
WALLACE, to the interrogatories as indicated were made
6 before me by the said witness after being first duly
sworn to testify the truth, and same were reduced to
7 typewriting under my direction; that the above and
foregoing deposition as set forth in typewriting is a
8 full, true, and correct transcript of the proceedings
had at the time of taking of said deposition.

9 I further certify that I am not, in any capacity, a
10 regular employee of the party in whose behalf this
deposition is taken, nor in the regular employ of his
11 attorney; and I certify that I am not interested in the
cause, nor of kin or counsel to either of the parties.

12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the
13 30TH day of SEPTEMBER, 2015.

14
15 

16 PHYLLIS WALTZ, RPR, CRR
TEXAS CSR, TCRR NO. 6813
17 Expiration Date: 12/31/15
LOUISIANA CCR NO. 2011010
18 Expiration Date: 12/31/15

19 Integrity Legal Support Solutions
20 Firm Certification No. 528
3100 Slaughter Lane, Suite A-101
21 Austin, Texas 78748
(512) 320-8690
22
23
24
25

Exhibit 16

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY :
YATES, KEITH COLE, and :
NICHOLAS DIAZ, individually: :
and on behalf of those :
similarly situated, :
Plaintiffs, :
VS. : No. 4:14-cv-1698
BRAD LIVINGSTON, in his :
Official capacity, ROBERTO :
HERRERA, in his official :
capacity, and TEXAS :
DEPARTMENT OF CRIMINAL :
JUSTICE, :
Defendants. :

ORAL AND VIDEOTAPED DEPOSITION OF
RAY WILSON
SEPTEMBER 17, 2015

ORAL AND VIDEOTAPED DEPOSITION of RAY WILSON,
produced as a witness at the instance of the Defendants,
and duly sworn, was taken in the above-styled and
numbered cause on September 17, 2015, from 1:40 p.m. to
3:30 p.m., before PHYLLIS WALTZ, RPR, CRR, Texas CSR,
TCRR, Louisiana CCR, in and for the State of Texas,
recorded by machine shorthand, at the Wallace Pack Unit,
2400 Wallace Pack Road, Navasota, Texas, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto; that the
deposition shall be read and signed before any Notary
Public.

1 Q. (BY MR. NEUHOFF) That's okay. You're doing a
2 good job. I do that sometimes, too. Sometimes I talk
3 over, you know, people when we kind of know what the
4 other person's saying.

5 A. I'm sorry.

6 Q. It's perfectly fine.

7 Okay. Have you heard of a chill towel?

8 A. Yes, sir.

9 Q. Have you bought one of those from the
10 commissary before?

11 A. No, sir.

12 Q. Why haven't you bought one of those?

13 A. \$6.50 and they're not really effective.

14 Q. Okay.

15 A. We can use our regular -- we have a towel --
16 oh, I'm sorry.

17 Q. No, go ahead.

18 A. We have a towel to wash down. You can do
19 basically the same thing with it. You know, you can wet
20 it down or you can get some cold water and pour on it
21 and all like that; and it's about as effective as what
22 that is, at least I find that out and...

23 Q. Let me go back a little bit to the ice water.
24 Does the ice water help you throughout the day?

25 A. Yes, sir.

1 Q. Okay.

2 A. Yes, sir.

3 Q. About -- I forgot to ask this one: About how
4 much water do you drink during, kind of, a normal day?

5 A. I try to at least get a gallon and a half.

6 Q. That's probably a lot better than I do.

7 Have you seen any posters about the heat
8 around the dorms?

9 A. Yes, sir.

10 Q. What kind -- what kind of posters are posted
11 up?

12 A. They have a tricolor poster that shows images
13 for those who have a difficult time with English or
14 Spanish, to more or less lay it out, you know, what to
15 do and so forth, establishes color on urine to let you
16 know what -- where -- where you're at, if you're getting
17 dehydrated and so forth.

18 Q. With that poster, have you ever kind of
19 checked the color of your urine to make sure?

20 A. Sir?

21 Q. With that tricolor poster, have you ever used
22 kind of that, I guess it would be diagram, to check the
23 color of your urine before?

24 A. Yep.

25 Q. Have you found it to be in the more yellow

1 **range?**

2 A. In the yellow range, yeah. Yes, sir.

3 **Q. About how often do you say you're in the**
4 **yellow dehydration range?**

5 A. It's hard to say. I couldn't -- couldn't
6 answer that.

7 **Q. Okay, that's fine. What other posters do they**
8 **have up in the dorms about heat and hydration?**

9 A. There was a black-and-white one talking about,
10 you know, watch out for dehydration, so forth like that.

11 **Q. And do they have any posters up in the dorms**
12 **about, like, places that are air conditioned?**

13 A. Yes, sir. That started about -- don't quote
14 me, but I think it's about two months ago.

15 **Q. And that --**

16 A. Three months ago, maybe.

17 **Q. What areas are listed on that poster?**

18 A. We have the -- the barber shop. We have the
19 lieutenant's office. We have the education office; the
20 law library; even the ODR, the officers dining room.
21 And I think they list some administrative offices, also.

22 **Q. Okay. And have you -- since that poster has**
23 **been up, have you requested to go to any of those**
24 **respite areas?**

25 A. No, sir, I haven't.

1 I, RAY WILSON, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5 _____
6 RAY WILSON

7 STATE OF T E X A S)
8 COUNTY OF _____)

9 Before me, _____, on
10 this day personally appeared RAY WILSON, known to me, or
11 proved to me under oath or through _____)
12 (description of identity card or other document)), to be
13 the person whose name is subscribed to the foregoing
14 instrument and acknowledged to me that they executed the
15 same for the purposes and consideration therein
16 expressed.

17 Given under my hand and seal of office on
18 this, the _____ day of _____, _____.
19
20
21

22 _____
23 NOTARY PUBLIC IN AND FOR THE
24 STATE OF TEXAS

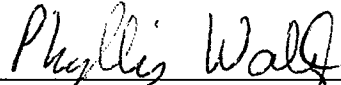
25 My Commission Expires: _____

1 THE STATE OF TEXAS :
COUNTY OF HARRIS :

2 I, PHYLLIS WALTZ, a Certified Shorthand Reporter, Texas
3 Certified Realtime Reporter, Registered Professional
Reporter, and Certified Realtime Reporter in and for the
4 State of Texas, do hereby certify that the facts as
stated by me in the caption hereto are true; that the
5 above and foregoing answers of the witness, RAY WILSON,
to the interrogatories as indicated were made before me
6 by the said witness after being first duly sworn to
testify the truth, and same were reduced to typewriting
7 under my direction; that the above and foregoing
deposition as set forth in typewriting is a full, true,
8 and correct transcript of the proceedings had at the
time of taking of said deposition.

9 I further certify that I am not, in any capacity, a
10 regular employee of the party in whose behalf this
deposition is taken, nor in the regular employ of his
11 attorney; and I certify that I am not interested in the
cause, nor of kin or counsel to either of the parties.

12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the
13 30TH day of SEPTEMBER, 2015.

14
15 

16 PHYLLIS WALTZ, RPR, CRR
TEXAS CSR, TCRR NO. 6813
17 Expiration Date: 12/31/15
LOUISIANA CCR NO. 2011010
18 Expiration Date: 12/31/15

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Exhibit 17

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY :
YATES, KEITH COLE, and :
NICHOLAS DIAZ, individually:
and on behalf of those :
similarly situated, :
Plaintiffs, :

VS. : No. 4:14-cv-1698

BRAD LIVINGSTON, in his :
Official capacity, ROBERTO :
HERRERA, in his official :
capacity, and TEXAS :
DEPARTMENT OF CRIMINAL :
JUSTICE, :
Defendants. :

ORAL AND VIDEOTAPED DEPOSITION OF
MARVIN RAY YATES
SEPTEMBER 3, 2015

ORAL AND VIDEOTAPED DEPOSITION of MARVIN RAY

YATES, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on September 3, 2015,
from 9:32 a.m. to 2:36 p.m., before PHYLLIS WALTZ, RPR,
CRR, Texas CSR, TCRR, Louisiana CCR, in and for the
State of Texas, recorded by machine shorthand, at the
Wallace Pack Unit, 2400 Wallace Pack Road, Navasota,
Texas, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto; that the deposition shall be read and signed
before any Notary Public.

1 cooler. Do you -- do you drink that water?

2 A. Yes, ma'am.

3 Q. About how much water do you drink per day?

4 A. Well, when the -- there is water in it, if you
5 can get some before it runs out. I try to drink about
6 seven or eight of those little bottles like that a day.

7 Q. And just so -- for the record, I'm going to --
8 are you referring to the bottle I have here? Is that
9 what you're talking about?

10 A. Yes, ma'am, same -- same amount.

11 Q. Okay. About that size there?

12 A. Yes, ma'am.

13 Q. Okay. And so, for the record, this is
14 about -- I think this says about 16 ounces. Is that
15 about the size of your bottle?

16 A. Yes, ma'am.

17 Q. And you said you try to drink about seven to
18 eight of those per day?

19 A. (Nodding head.)

20 Q. Is that a "yes"?

21 A. Yes, ma'am.

22 Q. Okay. And do you fill it up from the cooler?

23 A. If'n there's water in it.

24 Q. And the cooler in the water, is that ice
25 water, colder water?

1 top of it says, "NOTICE TO OFFENDERS." Is that
2 something that you reviewed in preparation for this
3 deposition; is that right?

4 A. Ma'am, this is not really worth the paper it's
5 written on because they won't let you go to these unless
6 you go to the infirmary and get -- verify it through
7 them. They won't let you into any of these areas.

8 Q. Okay. I'm going to ask you a little bit about
9 it. So this "NOTICE TO OFFENDERS" paper that you're
10 talking about, have you seen this before?

11 A. Yes.

12 Q. Where have you seen this?

13 A. They put it in the rest room in print much
14 finer than this. You might need a magnifying glass to
15 read it, but they put it up there in very, very fine
16 print.

17 Q. It's been posted in the rest rooms, you've
18 said. Anywhere else that you've seen it?

19 A. No.

20 Q. Have you seen posters that have been posted
21 around the unit anywhere discussing heat-related
22 illnesses, how to prevent them, and what to do if you
23 have a heat-related illness?

24 A. They come in here, put some of those little
25 things up in the dorm that said drink more water.

1 Q. So you've seen the posters?

2 A. (Nodding head.)

3 Q. Is that a "yes"?

4 A. That -- that particular one, the one about
5 drinking water.

6 Q. Have you seen the one that suggests that you
7 can look at the color of your urine to determine if
8 you're drinking enough water?

9 A. Yes, they have that. They have -- I believe
10 that one still might be in the -- in the rest room,
11 because I -- I did that very same thing. I followed its
12 little instructions to check myself, make sure I was --
13 it's really easy to become dehydrated in here because
14 that it's so hot. And there's something wrong with that
15 water, that it doesn't quench your thirst. It's real
16 bitter tasting.

17 Q. Other than it being bitter tasting, is there
18 anything else that you're complaining about about the
19 water?

20 A. Well, we've been told that it's got arsenic in
21 it and there's supposed to be paperwork out on, but I
22 haven't really seen it.

23 Q. Who's told you that?

24 A. I heard it ever since I got to this unit. I
25 heard they had it posted out here for the visitors. I

1 know the guards don't drink the water.

2 **Q. Let me stop you for a second. You said you've**
3 **heard it was posted out here somewhere?**

4 A. Yes, ma'am.

5 **Q. Did --**

6 A. We heard there were bulletins out here about
7 it.

8 **Q. Have you seen any documents?**

9 A. I believe it's notated somewhere in some of
10 this paperwork in the law library.

11 **Q. Have you seen it in there?**

12 A. Not myself, but I believe others -- I've heard
13 others talk about it.

14 **Q. So, sitting here today, is there any document**
15 **that you've seen that indicates there is arsenic in the**
16 **water that you drink here?**

17 A. No, ma'am, not in my -- not to my personal
18 knowledge.

19 **Q. And you said the officers don't drink it. Are**
20 **you --**

21 A. No, ma'am, they do not.

22 **Q. Are you claiming the officers don't drink the**
23 **same water that you're provided?**

24 A. No, ma'am, they do not.

25 **Q. And how do you base -- what -- what's that**

1 based on?

2 A. They drink strictly bottled water.

3 Q. So it's your testimony you've never seen an
4 officer here drink water out of a cup?

5 A. None of -- none of the water that we drink at
6 all, huh-uh.

7 Q. How do you know where the water comes from
8 that they're drinking?

9 A. I don't know. I don't know where it comes
10 from. I see them drink bottled water. I never see them
11 getting any water out of the tap or out of the water
12 jugs. I see them bring water to work with them.

13 Q. And this water bottle here, for example, could
14 be refilled from tap water, right?

15 A. Oh, they could.

16 Q. And that's what you drink out of, is you said
17 a water bottle like this, that you refill from tap
18 water, correct?

19 A. Yes, ma'am.

20 Q. So if you see an officer using a bottle, you
21 don't know where the water inside that bottle came from,
22 do you?

23 A. No. We just see them bring them in when they
24 come in for work.

25 Q. Have you ever seen anyone come around and

1 provide water to the officers?

2 A. No, ma'am. All -- they bring their own
3 bottles of water with them to work.

4 Q. You said that -- I think you said that you
5 were supposed to be provided some kind of documentation
6 on the arsenic or something like that. Did I -- did I
7 hear you right? You were waiting for some information
8 on it?

9 A. No, ma'am.

10 Q. No, okay.

11 Have you been provided any information that
12 indicates there is arsenic in the water here that you're
13 drinking?

14 A. No, ma'am.

15 Q. Okay. So is it fair to say that your belief
16 that there's arsenic in the water is based on hearsay,
17 of what you've heard from other inmates?

18 A. I've heard it from guards and maintenance
19 workers, inmates. I've heard it from the day I got to
20 this farm.

21 Q. What --

22 A. So I've never bothered to delve off into it
23 to -- to verify it for myself. No, I haven't.

24 Q. What guards have you heard tell you that?

25 A. Just got to pick out one down the hall. I've

1 heard the maintenance guys talking about it.

2 Q. And what are the names of the maintenance guys
3 that you've heard talk about it?

4 A. I don't know their names, ma'am.

5 Q. Are these inmate maintenance workers or guard
6 maintenance workers?

7 A. Just inmates and guards alike, talking to the
8 guards.

9 Q. Have you ever had --

10 A. About putting -- the guards talking to the
11 inmates about putting something in the -- wherever they
12 doctor that water up. They've got a purifying system
13 around here somewhere, and they were talking about the
14 chemicals they put in it. That's all I know about it.

15 Q. When you say "the chemicals they put in it,"
16 are you talking about arsenic? Is that what you
17 understand it to mean?

18 A. I don't know. It's something they do to try
19 to stabilize that water or make it better or something.

20 Q. And you don't know what the chemical or what
21 the --

22 A. No.

23 Q. -- substance is they're putting in the water?

24 A. No, I don't know what they put in.

25 Q. Have you ever had anyone -- any medical

1 I, MARVIN RAY YATES, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

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MARVIN RAY YATES

STATE OF T E X A S)
COUNTY OF _____)

Before me, _____, on
this day personally appeared MARVIN RAY YATES, known to
me, or proved to me under oath or through
_____) (description of identity card or
other document)), to be the person whose name is
subscribed to the foregoing instrument and acknowledged
to me that they executed the same for the purposes and
consideration therein expressed.

Given under my hand and seal of office on
this, the _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

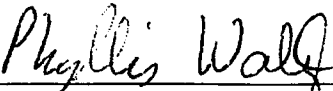
My Commission Expires: _____

1 THE STATE OF TEXAS :
COUNTY OF HARRIS :

2 I, PHYLLIS WALTZ, a Certified Shorthand Reporter, Texas
3 Certified Realtime Reporter, Registered Professional
Reporter, and Certified Realtime Reporter in and for the
4 State of Texas, do hereby certify that the facts as
stated by me in the caption hereto are true; that the
5 above and foregoing answers of the witness, MARVIN RAY
YATES, to the interrogatories as indicated were made
6 before me by the said witness after being first duly
sworn to testify the truth, and same were reduced to
7 typewriting under my direction; that the above and
foregoing deposition as set forth in typewriting is a
8 full, true, and correct transcript of the proceedings
had at the time of taking of said deposition.

9 I further certify that I am not, in any capacity, a
10 regular employee of the party in whose behalf this
deposition is taken, nor in the regular employ of his
11 attorney; and I certify that I am not interested in the
cause, nor of kin or counsel to either of the parties.

12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the
13 18TH day of SEPTEMBER, 2015.

14
15 

16 PHYLLIS WALTZ, RPR, CRR
TEXAS CSR, TCRR NO. 6813
17 Expiration Date: 12/31/15
LOUISIANA CCR NO. 2011010
18 Expiration Date: 12/31/15

19 Integrity Legal Support Solutions
20 Firm Certification No. 528
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21 Austin, Texas 78748
(512) 320-8690
22
23
24
25

Exhibit 18

Heidi K. Bojes, Ph.D. - 1/22/2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEITH COLE, JACKIE §
BRANNUM, RICHARD KING, §
DEAN ANTHONY MOJICA, RAY §
WILSON, FRED WALLACE, §
AND MARVIN RAY YATES, §
INDIVIDUALLY AND ON §
BEHALF OF THOSE §
SIMILARLY SITUATED §

Plaintiffs, §

VS. §

CIVIL ACTION NO.
4:14-cv-1698

BRAD LIVINGSTON, IN HIS §
OFFICIAL CAPACITY, §
ROBERTO HERRERA, IN HIS §
OFFICIAL CAPACITY, AND §
THE TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE, §

Defendants. §

ORAL AND VIDEOTAPED DEPOSITION OF
HEIDI K. BOJES, Ph.D.
JANUARY 22, 2016

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

Heidi K. Bojes, Ph.D. - 1/22/2016

(Deposition Exhibit No. 1 marked.)

THE VIDEOGRAPHER: We are on record at 9:33 a.m., January 22nd, 2016, with the start of DVD number one.

You may swear in the witness.

HEIDI K. BOJES, Ph.D.
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. EDWARDS:

Q. Good morning. Would you kindly state your name for the record.

A. Heidi Bojes.

Q. My name is Jeff Edwards and I'm one of the lawyers that represent a putative class of plaintiffs in the -- relating to prison conditions at the Pack Unit. Do you understand that?

A. Yes.

Q. Okay. And I understand that you're here to testify principally about arsenic in the water at the Pack Unit. Is that your understanding as well?

A. Yes.

Q. And are all of your opinions contained in the expert report that is before you, entitled Expert Report of Heidi Bojes, Ph.D.?

A. Yes.

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
1678ad13-6e59-40ad-8431-8e6ea4f4d91c

Plaintiffs' Preliminary Injunction

Appendix 237

Heidi K. Bojes, Ph.D. - 1/22/2016

1 anything to do with the Pack Unit?

2 A. No.

3 Q. Okay. Did you speak with Doctor Villanacci?

4 A. I spoke to him about it, because he -- about
5 the case -- or about whether I -- we should do the
6 evaluation.

7 Q. What did you guys talk about or decide?

8 A. And he said, yes, we should do it because
9 that's what we did -- do. And I told him a little bit
10 about what it was about. Yeah.

11 Q. Okay. I take it you did this as part -- did
12 you do this as part of your job with the State?

13 A. Yes.

14 Q. Okay. You weren't provided any extra
15 compensation?

16 A. No.

17 Q. But you are, nevertheless, all of your
18 compensation is paid by the State of Texas. Correct?

19 A. Right. The State of Texas pays me.
20 Correct.

21 Q. Okay.

22 A. My salary.

23 Q. No, no. That's fine.

24 Have you ever given a deposition
25 before?

WRIGHT WATSON & ASSOCIATES

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Plaintiffs' Preliminary Injunction

Appendix 238

Heidi K. Bojes, Ph.D. - 1/22/2016

1 that soil or groundwater?

2 A. Yes.

3 Q. And what was the opinion that you came to?

4 A. I don't remember the details on that.

5 Q. Okay. Did you -- do you consider the EPA to
6 be an agency that would provide guidance to you in
7 evaluating the safety of contaminant levels?

8 A. EPA is one source that we review. Their
9 documents is one source of information we use when we
10 do these sort of health assessments.

11 Q. I appreciate that. But do you consider the
12 EPA to be a reliable agency and provide guidance on
13 the safe levels of contaminants in water?

14 A. Yes.

15 Q. Okay. Do you consider -- well, do you know
16 what IARC is?

17 A. It's the International Agency of Research
18 Council, I believe.

19 Q. Okay. Do you know -- are you aware if it's
20 a leading cancer agency?

21 A. I believe it is.

22 Q. Okay.

23 A. A leading cancer agency, and it's an EPA.

24 Q. Well, are you aware that it's one of the
25 most respected agencies --

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1678ad13-6e59-40ad-8431-8e6ea4f4d91c

Plaintiffs' Preliminary Injunction

Appendix 239

Heidi K. Bojes, Ph.D. - 1/22/2016

1 as opposed to nodding your head, it'll just make it
2 easier for us --

3 A. All right. I'll do my best. But I may
4 forget, so you'll have to say, you're nodding.

5 Q. That is more than reasonable.

6 A. Okay.

7 Q. More than reasonable.

8 A. Got it.

9 Q. Okay. Did you consult the IARC prior to
10 doing your report?

11 A. Yes.

12 Q. And you consulted the EPA guidelines prior
13 to doing your report?

14 A. Yes.

15 Q. And are you aware -- well, are you aware
16 that the IARC classifies arsenic as a known human
17 carcinogen?

18 A. Yes.

19 Q. Okay. And are you aware that, according to
20 the IARC, it's that arsenic is a human carcinogen, a
21 Group 1 human carcinogen, and it has the highest
22 classification of a compound for carcinogenicity?

23 A. Yes, I am.

24 Q. And you're aware that drinking water is one
25 of the two principal exposure pathways that led to

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
1678ad13-6e59-40ad-8431-8e6ea4f4d91c

Plaintiffs' Preliminary Injunction

Appendix 240

Heidi K. Bojes, Ph.D. - 1/22/2016

1 this classification?

2 A. Yes.

3 Q. What is the other principal exposure
4 pathway?

5 A. Inhalation.

6 Q. Okay. What is the -- what is the current
7 standard in parts per billion, according to the EPA,
8 for arsenic -- for safe arsenic levels in drinking
9 water?

10 A. The -- the maximum contaminant level which
11 EPA sets, which is the allowable water drinking --
12 level of arsenic in the water, is ten parts per
13 billion.

14 Q. Right.

15 A. Or .01 milligrams per liter, which would be
16 ppm. Right.

17 Q. And I appreciate that because I know your
18 report uses milligrams per liter, and I -- you're a
19 scientist and I'm sure that's how they do it. To the
20 extent I kind of --

21 A. You do ppm?

22 Q. Just to -- I'm going to try to make it as
23 easy for me to understand --

24 A. That's fine.

25 Q. -- frankly, but if you need to -- just try

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
1678ad13-6e59-40ad-8431-8e6ea4f4d91c

Plaintiffs' Preliminary Injunction

Appendix 241

Heidi K. Bojes, Ph.D. - 1/22/2016

1 to help me at different points. Okay?

2 A. Yes.

3 Q. And I appreciate what you said, because I
4 think what I heard you say is, according to EPA, the
5 allowable level of arsenic in a system that provides
6 drinking water to people is ten parts per billion or
7 .01 milligrams per liter?

8 A. Correct.

9 Q. Okay. Do you know if the Pack Unit is far
10 above that level?

11 MR. GREER: Objection. Form.

12 A. Based on the 38 sampling results that I
13 reviewed -- excuse me -- it is -- it is above that
14 ten -- level of ten micrograms per liter. Anywhere
15 from twice above that, and there was one sample that
16 was 45 micrograms per liter.

17 Q. (BY MR. EDWARDS) And I think, if you look
18 at the numbers that you looked at, the average would
19 be about 250 percent higher than the allowable EPA
20 level. Right?

21 A. 250 percent higher? So the allowable level
22 is ten, and then the maximum one that I remember
23 seeing was 45, so wouldn't that be four times higher?

24 Q. Yeah, that's right.

25 A. Or 4.5 times higher?

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1 Q. Exactly. And I'm just trying --

2 A. Okay. Maybe we're saying the same thing --

3 Q. -- when you look over the --

4 MR. EDWARDS: No, no. You're fine.

5 MR. GREER: I think the question was
6 average.

7 Q. (BY MR. EDWARDS) There have been readings
8 at the Pack Unit of arsenic levels 450 percent higher
9 than the EPA allows. Right?

10 A. There has been -- I'm not -- yeah. I -- so
11 four times higher.

12 Q. Four and a half times higher than the
13 maximum that the EPA allows. Right?

14 A. The EPA allows ten -- right. Correct.

15 Q. Okay. Well, do you know that -- well,
16 please tell the jury what the risks are from exposure
17 to arsenic at levels that high.

18 A. The -- the EPA determined -- well, the risk
19 that they're protecting for, the -- what they're
20 aiming for is cancer.

21 Q. Any particular types of cancer?

22 A. Skin.

23 Q. Lung cancer?

24 A. Skin, lung, bladder, kidney, primarily.

25 Q. Those are very serious diseases to

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 encounter. Fair?

2 A. Absolutely.

3 Q. No State agency should intentionally subject
4 people in its care to levels as high as the arsenic
5 levels at the Pack Unit. Correct?

6 A. So that seems like you're asking my personal
7 opinion, so...

8 Q. Well, what is --

9 A. I think --

10 Q. Let me -- let me -- I'll reask it in a
11 minute.

12 What is your job again?

13 A. I'm a -- a manager, director of an
14 epidemiology toxicology registry unit.

15 Q. Okay. And a registry unit for the -- for
16 Health and Human Services here in Texas?

17 A. For the Department of State Health Services.

18 Q. Okay. And the point of having a Department
19 of Health services in the State of Texas is to protect
20 the citizenry from known dangers of potential
21 contaminants, or at least that's one of them. Right?

22 A. That's one of them, right, to improve public
23 health.

24 Q. And you would agree, would you not, that
25 inmates at the Pack Unit are members of the public

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 that the State of Texas is duty bound to protect.

2 Right?

3 A. Correct.

4 Q. Just because they're in prison doesn't mean
5 they should be subjected to dangerous arsenic levels.

6 Right?

7 A. Correct.

8 Q. Okay. According to the numbers that you
9 evaluated, levels far in excess of what the EPA
10 believes is safe or what the IARC believes is safe
11 have been present at the Pack Unit for -- since at
12 least 2005. Right?

13 A. I -- the data I reviewed goes back to 2006.

14 Q. So since 2006, these arsenic levels at the
15 Pack Unit have been far in excess of the safe level
16 according the EPA and the IARC. Right?

17 MR. GREER: Objection. Form.

18 A. I would say that they've been two times and
19 up to four times as high as the MCL.

20 Q. (BY MR. EDWARDS) Do you believe that that
21 is far in excess of the acceptable level?

22 MR. GREER: Objection. Form.

23 Answer if you can.

24 A. So I would -- so part of my charge was to, I
25 guess, evaluate that question. And the way I did it

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 A. I would think someone six feet tall, too.
2 5'11" is tall. Okay.

3 Q. Well, you're talking about, at the Pack
4 Unit, a significant difference between the acceptable
5 level of arsenic in the drinking water and what
6 actually is in the drinking water at the Pack Unit.
7 Right?

8 A. Right.

9 Q. Okay. Now, are you aware of technology that
10 exists to correct this problem?

11 A. Yes.

12 Q. Okay. Is that -- has that technology been
13 invented yesterday or has that been around for a long,
14 long time?

15 A. I think it's been around for a while.

16 Q. Okay. If a school district had 45 parts per
17 billion levels of arsenic in its drinking water, or
18 25 parts per billion in its drinking water, would you
19 recommend that the school system do everything it can
20 to bring those levels down to the safe EPA standard?

21 MR. GREER: Objection. Form.

22 MR. EDWARDS: What's the basis?

23 MR. GREER: Incomplete hypothetical.

24 Q. (BY MR. EDWARDS) You can answer my
25 question.

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1 A. So I don't make any recommendations in this
2 report. I wasn't -- that wasn't what I was charged to
3 do. All I was charged to do is to determine what the
4 health risks were. And the health risks would -- I
5 would have the same conclusions for a school -- for
6 school children as I would for this -- for the
7 inmates.

8 Q. Well, would you tell the school to fix the
9 problem?

10 A. I would tell the school and the prison the
11 same thing, that the risk is what it is, and that to
12 avoid arsenic levels, you shouldn't drink the water or
13 you should lower it.

14 Q. Okay. Well, one important part of a State
15 agency that's protecting the people of Texas is not
16 just doing the research, but it's telling people what
17 to do because of the research. Right?

18 A. Right.

19 Q. Okay. So again, you know, for the benefit
20 of the court, if this were a school system, I
21 assume -- did I hear you correctly? You would tell
22 the school system, you need to fix this to bring these
23 down to the levels that the EPA recommends. Is that
24 fair?

25 A. If they -- if I was making a recommendation

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1 to the school system, I would say, yes.

2 Q. Okay. And you would make that same
3 recommendation to the Pack Unit. Right?

4 A. Sure.

5 Q. Okay.

6 A. If someone asked me, yeah. Like you are.

7 Q. Like I am. And you would have made that
8 recommendation in 2006. Right?

9 A. Uh-huh. Yes.

10 Q. Yeah. I mean, we're looking at a --

11 A. Yeah.

12 Q. If these numbers are to be believed, and you
13 have no reason to disbelieve them. Right?

14 A. I have no reason to disbelieve them.

15 Q. Okay. Now, you didn't personally see the
16 samples. Right?

17 A. I did not.

18 Q. You don't know who collected the samples, do
19 you?

20 A. I do not.

21 Q. You don't know if they were collected by
22 like a correctional officer or someone qualified to
23 collect them, or do you?

24 A. I do not. I'm -- yeah, I do not.

25 Q. Okay. Do you know how they're collected? I

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1 an elevated risk of multiple cancers, don't you?

2 A. It -- it presents an elevated risk, but that
3 risk is a low risk, so -- it is a low risk.

4 Q. It depends on the -- how long the exposure
5 is. Right?

6 A. Correct.

7 Q. It depends on how much water you're
8 drinking. Right?

9 A. Correct.

10 Q. Okay. And it is statistically significant
11 and elevated. Right?

12 A. I'm not sure if it's statistically
13 significant. It is elevated. And you're right, it
14 does depend on how much water you consume, how long
15 you consume it. Right. And the risk would obviously
16 go up the more you consume, the longer you consume.

17 Q. Shouldn't the State of Texas, when it knows
18 about a problem in its prison system that increases
19 the risk of multiple cancers, solve that problem as
20 quickly as it can?

21 A. So since it is -- there is an increased
22 risk, I believe that the problem should be fixed. But
23 it isn't -- I would not regard this as an imminent
24 threat.

25 Q. That's because it takes some time for the

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1 cancer to develop. Right?

2 A. Well, because it does take time for cancer
3 to develop, but the -- the risk levels are low.

4 Q. Why did the EPA -- the EPA changed its
5 standard from 50 parts per billion to ten parts per
6 billion. Correct?

7 A. Yes.

8 Q. Do you know why?

9 A. They -- they 50 -- they didn't think 50 was
10 protective enough.

11 Q. They thought it had to be -- and many
12 scientists think it needs to be lower than ten parts
13 per billion. Are you aware of that?

14 A. Yes.

15 Q. Many scientists think, once you're above
16 three parts per billion, there is a problem. Right?

17 A. Correct. Well, zero is the goal, is the MCL
18 goal with cancer-causing agents like arsenic, because
19 they don't know how arsenic causes -- the mechanism by
20 which it causes cancer. The only -- they -- the only
21 way -- they say, no level is good enough.

22 Q. And that's because arsenic is a very
23 dangerous substance. Right?

24 MR. GREER: Objection. Form.

25 A. The reason why they set the MCL G, the

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1 MCL -- maximum contaminant level to zero is because
2 they don't know how arsenic works, the mechanism of
3 how it works. So if they could develop -- if they
4 knew a level below which no effects would occur, then
5 they could set it at that level.

6 Q. All right. Do you know if the Pack Unit has
7 fixed its arsenic levels such that they comply with
8 the EPA?

9 A. I -- I don't know. I don't think they have.

10 Q. So if we believe this data, the Texas
11 Department of Criminal Justice has known since 2006
12 that its arsenic levels are above the acceptable
13 standard set by the EPA. Is that correct?

14 A. I don't know if the criminal justice -- I'm
15 assuming they would know because these are their
16 results. But, yes, since 2006 the level has been
17 above ten -- the MCL. Correct.

18 Q. What is it today? What day is it today?

19 A. The 22nd, 2016.

20 Q. Okay. So that's almost ten years ago.
21 Right?

22 A. 11? Is it 11 years -- ten years -- yes.

23 Q. What on -- is that acceptable, according
24 to -- I mean -- well, strike that.

25 Do you know of any -- do you know

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1 personally of any reason why this problem could not
2 have been fixed in the last ten years?

3 MR. GREER: Objection. Form.

4 A. I don't know why it could not have been
5 fixed.

6 Q. (BY MR. EDWARDS) Okay. Do you know if
7 there are plans to even fix it, to bring it down to
8 acceptable EPA levels, prior to this summer?

9 A. I don't know --

10 MR. GREER: Excuse me.

11 Objection. Assumes facts not in
12 evidence.

13 MR. EDWARDS: It's a question.

14 MR. GREER: Okay. I've made my
15 objection.

16 Go ahead.

17 A. From what Matt has told me, that they do
18 have plans to install a filter system to reduce the
19 arsenic levels to meet ten.

20 Q. (BY MR. EDWARDS) In the winter -- in next
21 year. Right? January 2017. Right?

22 A. Right.

23 Q. And this information comes from Mr. Greer?

24 A. Correct.

25 Q. Okay. That means that these dangerously

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 high arsenic levels, inmates will continue to be
2 exposed to them. Right?

3 MR. GREER: Objection. Form.

4 A. The inmates will be exposed to levels twice
5 to four times. Right.

6 Q. (BY MR. EDWARDS) Okay. Let me reask that.

7 That means that this summer, inmates
8 will once again be exposed to between two and four
9 times the acceptable level, according to the EPA.
10 Right?

11 A. They can if these levels are consistent.

12 Q. And even higher if you take the tack that
13 any trace element -- any trace percentage of arsenic
14 in your water may lead to health problems. Right?

15 A. I'm not following that. Even higher?

16 Q. Well, do you know -- is there arsenic in
17 everyone's drinking water?

18 A. I don't -- I can't answer that either.
19 There may be.

20 Q. Okay. If I buy a bottle of Ozarka bottled
21 water, should that have arsenic in it?

22 A. I don't -- I don't know about bottled water,
23 the regulations for bottled water. I don't think
24 they're are even any. There could be. It depends
25 where you get that water, if you get it --

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 Q. I just -- on the label, I've never seen
2 arsenic on a label for bottled water.

3 A. Well --

4 Q. Has your agency ever tested bottled water
5 randomly to determine whether or not there are arsenic
6 levels?

7 A. No, they have not.

8 Q. If the arsenic levels in bottled water were
9 at the levels of the Pack Unit, would you allow that
10 water to be sold?

11 A. Would I?

12 MR. GREER: I'm going to object to the
13 form.

14 A. I would make the same recommendation I would
15 make here.

16 Q. (BY MR. EDWARDS) You would tell them to
17 stop it. You would rely on the powers that be who
18 govern the provision of bottled water to take your
19 recommendation seriously. Right?

20 A. Yes.

21 Q. Okay. Have you made your recommendation to
22 fix this problem to anyone besides Matt Greer?

23 A. No, I have not.

24 Q. Did you talk to -- was it Doctor John --

25 A. Villanacci.

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 Q. Yeah, did you talk to him about this issue?

2 A. Yes.

3 Q. What did you talk to him about?

4 A. I told him about the situation. The...

5 Q. What did he say?

6 A. He -- we -- I don't remember exactly what we
7 talked about. We talked about how we would approach
8 this problem.

9 Q. What did he say?

10 A. What did he say?

11 Q. And when you say, approach this problem, you
12 mean analyze the problem?

13 A. Yes. Analyze it. Right.

14 Q. You're the agency that the Texas Department
15 of Criminal Justice can turn to if it wants to analyze
16 how much risk it is because there is lots of arsenic
17 in its water at the Pack Unit. Right?

18 MR. GREER: Objection. Form.

19 A. Right. One of the things we do -- my group
20 does is evaluate the health risk of environmental
21 chemicals.

22 Q. (BY MR. EDWARDS) TDCJ has known that there
23 has been arsenic in its water at the Pack Unit for
24 almost ten years. Right?

25 A. I'm not sure how -- when they first --

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 Q. At least ten years. Right?

2 A. I don't know --

3 MR. GREER: Answer if you can, Doctor.

4 A. Yeah, I don't know when they found out about
5 it. I know...

6 Q. (BY MR. EDWARDS) Okay. Well --

7 A. Oh, wait. Wait. I'm sorry. So did you say
8 TD -- the prison?

9 Q. Yeah.

10 A. The prison, yeah, I'm assuming they know
11 because they sampled the results. Correct.

12 Q. I mean, if they didn't know and they just
13 threw these results into a desk drawer --

14 A. Yeah.

15 Q. -- you would find that problematic?

16 A. I misunderstood you. Uh-huh. Got it.

17 Q. Did your agency get a call in 2006 about
18 evaluating these levels?

19 A. Not that I'm aware of.

20 Q. 2007?

21 A. I -- I wasn't at that agency then, but not
22 that I know of.

23 Q. Okay.

24 A. This is --

25 Q. At any point until you were retained in this

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 lawsuit, was your agency ever consulted about the
2 problems of arsenic levels in its water at the Pack
3 Unit?

4 A. Not that I know of, so, no.

5 Q. Okay. Do you know if the inmates at the
6 Pack Unit have been told that there are levels of
7 arsenic in the water that they're drinking that
8 elevate their risk of multiple cancers?

9 A. I don't -- I don't know if they've been
10 told.

11 Q. Do you think that they ought to be told?

12 A. Yes.

13 Q. Why?

14 A. Because there is a risk of drinking this
15 water that is more than the risk they would -- more
16 than the risk they would have drinking just at the
17 MCL. And it's their right, so they can have the
18 choice of whether to drink the water or not.

19 Q. Okay. They should have the choice -- they
20 should have a choice to drink safe water. Right?

21 MR. GREER: Objection. Form.

22 A. They -- they should have the choice to
23 decide -- they -- I believe that they should know what
24 the results are of their drinking water.

25 Q. (BY MR. EDWARDS) Do you know if there is an

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 alternative source of water for the inmates to drink
2 at the Pack Unit?

3 A. I don't -- I don't remember that. I don't
4 know if they're providing bottled water or not.

5 Q. Well, should there be an alternative source
6 of water that doesn't have these elevated levels of
7 arsenic and that doesn't elevate the risk of
8 eventually developing lung cancer, bladder cancer, or
9 kidney cancer?

10 MR. GREER: Let me object as outside
11 the scope of her opinions. And my objection is under
12 Rule 701 through 704.

13 Go ahead and answer if you can, Doctor.

14 A. So to -- can you repeat the question?

15 Q. (BY MR. EDWARDS) Sure. Yeah, I mean,
16 should there be an alternative source of water that
17 doesn't have two to four times the level of arsenic
18 that is appropriate, according to the EPA?

19 A. So -- so from the calculations, there is an
20 increased risk. It's a small increased risk. But to
21 not have that risk, you should not drink the water.
22 So, yes.

23 Q. Okay. And so you could bring in bottled
24 water which didn't -- which wasn't laced with the
25 levels of arsenic that do increase your risk of

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 cancer. That's a possibility. Right?

2 A. Yes.

3 MR. GREER: Same objection previously
4 asserted under Article 7, I'll say, of the Rules of
5 Evidence.

6 Q. (BY MR. EDWARDS) One would solve that
7 problem, the provision of safe bottled water, simply
8 by buying it and bringing it into the prison. Right?

9 MR. GREER: Same objection.

10 Q. (BY MR. EDWARDS) It could. Right?

11 A. Drinking water without arsenic would lower
12 their risk.

13 Q. That would be better for the prison
14 population. Right?

15 MR. GREER: Objection, same previously
16 asserted.

17 A. Their risk would be less.

18 Q. (BY MR. EDWARDS) Yeah.

19 A. Than they have now.

20 Q. There is going to be testimony in this case
21 from an epidemiologist, a doctor, and all likelihood a
22 former director of a prison system that you ought to
23 provide drinking water that is safe and below the
24 arsenic levels recommended by the EPA. Do you have
25 any reason to disagree with that?

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 MR. GREER: Objection. Assumes facts
2 not in evidence. In other words, that I think only
3 one of the three people mentioned mentions anything
4 about that in their report. So I'll object to that
5 point of the question.

6 But answer if you can, Doctor.

7 A. So you're asking me if these experts, if
8 they -- their recommendation is to drink safe water,
9 am I disagreeing with that?

10 Q. (BY MR. EDWARDS) Yes.

11 A. No. I think people should drink --

12 Q. Some of them are softballs, and I appreciate
13 that, Doctor. Okay.

14 Do you know about the -- the problems
15 of extreme heat inside the Texas prison system during
16 the summer months?

17 MR. GREER: Let me object under Rule
18 601, 602 and 701 through 704.

19 You can answer if you can, Doctor.

20 A. I don't know.

21 Q. (BY MR. EDWARDS) Do you know if the housing
22 areas at the Pack Unit are air conditioned?

23 MR. GREER: Same objection.

24 A. I don't think they're air conditioned
25 because that's what this whole thing is about.

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 Q. (BY MR. EDWARDS) And I'll represent to you
2 that they're not air conditioned and that there is no
3 climate control mechanism in which the temperature can
4 be raised or lowered mechanically. Okay?

5 A. Yes.

6 Q. Okay. Have you been told anything
7 differently than the representation I gave you?

8 MR. GREER: Same objections.

9 A. No.

10 Q. (BY MR. EDWARDS) Okay. Were you told
11 anything about the subject matter of this lawsuit by
12 anyone from TDCJ or the Attorney General's Office?

13 MR. GREER: Same objections.

14 A. I was told that the -- the lawsuit is
15 regarding the living conditions of the prisoners, that
16 there isn't air conditioning -- yeah.

17 Q. (BY MR. EDWARDS) They're living in
18 temperatures that are above 90 degrees all the time
19 during the summer months.

20 MR. GREER: Objection.
21 Mischaracterizes the evidence and --

22 MR. EDWARDS: Let me reask it.

23 MR. GREER: -- same objections as -- go
24 ahead.

25 Q. (BY MR. EDWARDS) Are you aware that the

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 inmates are living in temperatures above 90 degrees
2 for a significant period of every day in the summer?

3 MR. GREER: Objection. Assumes facts
4 not in evidence. Also object under Rule 601, 602 and
5 701 through 704. This is very far afield of anything
6 this expert is being qualified for or offered for in
7 this case.

8 Go ahead, Doctor.

9 A. I can imagine living in Texas without air
10 conditioning is really -- would be really difficult
11 and very, very hot and uncomfortable. Yeah. That
12 would be...

13 Q. (BY MR. EDWARDS) It would -- would it --
14 based on your knowledge of epidemiology and the human
15 body, it's harder for people who are elderly or who
16 have health conditions to live in those periods of
17 extreme heat. Right?

18 MR. GREER: Same objections. This
19 expert has not been qualified on this subject, so the
20 objection is under 601, 602, and 701 through 704.
21 It's not in her report and it also calls for
22 speculation.

23 Go ahead and answer.

24 A. So, right, I'm not an expert on any of these
25 things, but, yes, the elderly tend to have a harder

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1 time dealing with extreme heat.

2 Q. (BY MR. EDWARDS) Okay. And you know that
3 how?

4 A. Pardon me?

5 Q. How do you know that the elderly have a more
6 difficult time dealing with extreme heat?

7 MR. GREER: Same objection.

8 A. They -- they are just not as -- they're not
9 as young. Their metabolism, their heating, cooling
10 mechanisms. They might have other conditions that
11 make it harder, heart conditions or --

12 Q. (BY MR. EDWARDS) Sure. And --

13 A. -- all that.

14 Q. That would be fairly obvious to anyone who
15 has lived in the state of Texas. Right?

16 A. Correct.

17 MR. GREER: Same objections.

18 Q. (BY MR. EDWARDS) And it certainly would be
19 obvious to anyone who has a scientific background and
20 who has a Ph.D. in epidemiology. Right?

21 MR. GREER: Same objections.

22 Q. (BY MR. EDWARDS) Anybody. Anybody who has
23 lived in Texas with your background, you have a Ph.D.
24 in epidemiology. Right?

25 A. No, it's not in epidemiology.

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1 Q. (BY MR. EDWARDS) Do you know of a single
2 medication?

3 MR. GREER: Same objections.

4 A. I can't --

5 Q. (BY MR. EDWARDS) If you don't, you don't.
6 That's okay. No?

7 A. I don't think so.

8 Q. Okay. All right.

9 Are you aware that the State of Texas,
10 the prison system, has adopted mitigation -- alleged
11 mitigation measures to deal with the extreme heat?

12 MR. GREER: Same objections.

13 A. The only thing that I know about that is
14 from Matt.

15 Q. (BY MR. EDWARDS) Uh-huh. And what did he
16 tell you?

17 A. And he said that the way this unit does
18 that, mitigates the high temperature, is by providing
19 water, ice water.

20 Q. Okay. Would you tell -- well, would you
21 tell the court what problems there could be if this
22 measure -- well, strike that.

23 That means that the principal measure
24 in which this Pack Unit prison is taking to deal with
25 the extreme heat is to intentionally expose the

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1 inmates to elevated levels of arsenic, in violation of
2 EPA standards. Correct?

3 MR. GREER: Same objections.

4 Go ahead.

5 A. By providing water, ice water, and if it's
6 from their groundwater, they would be -- and they're
7 drinking more of it, they would be exposed to more
8 arsenic.

9 Q. (BY MR. EDWARDS) And the more water they
10 drink, the higher the risk of developing cancer.
11 Correct?

12 A. Correct.

13 Q. Do you know how the Pack Unit justifies
14 having a practice that focuses on exposing upwards of
15 1400 inmates intentionally to higher than permissible
16 levels of a known carcinogen?

17 MR. GREER: Objection. Form.

18 A. I don't know how to answer that.

19 Q. (BY MR. EDWARDS) Well, how on earth could
20 you justify exposing inmates to a carcinogen
21 intentionally at higher levels than the EPA allows?

22 MR. GREER: Same objection.

23 A. You're -- the question, if I'm understanding
24 it, you're asking me how -- what their justification
25 is?

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1 Q. (BY MR. EDWARDS) Well, do you know their
2 justification?

3 A. I don't know their justification.

4 Q. Can you think of any?

5 MR. GREER: Objection. Calls for
6 speculation.

7 Q. (BY MR. EDWARDS) No way to speculate, but
8 can you think of any?

9 A. I don't know -- I don't know.

10 Q. I can't think of any.

11 A. I don't want to talk on behalf --

12 MR. GREER: Same objection.

13 A. -- of the prison unit.

14 Q. (BY MR. EDWARDS) All right. Okay.

15 Do you know if chronic low dose
16 exposure to arsenic has been implicated in respiratory
17 problems in children and adults?

18 MR. GREER: Let me object to the form,
19 if you can define the dosage you're talking about.

20 Q. (BY MR. EDWARDS) Would you answer my
21 question?

22 A. Yeah. I don't -- I know -- so via
23 inhalation, arsenic, depending on the dose, I think it
24 does cause some respiratory issues. It can also lead
25 to lung cancer.

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1 Q. Okay. And also by drinking the water, it
2 can -- it's been implicated in -- well, is it
3 associated with elevated risks of cardiovascular
4 disease, diabetes, cancers of the skin, cancers of the
5 bladder, and lung cancer.

6 MR. GREER: Same objection.

7 A. Yes.

8 Q. (BY MR. EDWARDS) And are you aware that
9 trace amounts of arsenic in the body interfere with
10 tumors suppressing glucocorticoid hormones?

11 MR. GREER: Same objection.

12 A. I wasn't aware of that.

13 Q. (BY MR. EDWARDS) Okay. Do you know that
14 arsenic interferes with the normal function of immune
15 cells?

16 MR. GREER: Same objection.

17 A. Yeah, I wasn't aware of that either.

18 Q. (BY MR. EDWARDS) Do you know that arsenic
19 can damage lung cells and cause inflammation of cells
20 in the heart?

21 MR. GREER: Same objection.

22 Go ahead.

23 A. Yes.

24 Q. (BY MR. EDWARDS) Okay. Do you know that
25 researchers at the University of Chicago found that

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1 levels would take into -- into account sensitive
2 individuals like people who have -- who are sick.

3 Q. (BY MR. EDWARDS) Okay. Do you know who --
4 what would you describe as a sensitive subpopulation
5 with regards to arsenic in drinking water at these
6 levels at the Pack Unit?

7 A. So the definition or what I regard as
8 sensitive subpopulations are the young -- well, so it
9 would be, in general --

10 Q. Well, fortunately, we don't have any young
11 people at the Pack Unit that I'm aware of.

12 A. Right. So elderly, anyone who is sick or
13 immunocompromised, those are all sensitive
14 individuals. Older people.

15 Q. So for older or elderly people, would that
16 be above 60, above 65?

17 A. It would -- it would depend. There are some
18 very hardy 80 year-olds and some sickly 50 year-olds.

19 Q. And I appreciate. But you're an
20 epidemiologist and you have to take groups and try to
21 figure out risks. Right?

22 A. Correct.

23 Q. There is always going to be a super healthy
24 88 year-old, but most 88 year-olds aren't super
25 healthy. Right?

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1 about -- I don't remember.

2 Q. Okay. All right. Let me take a look at it.
3 Okay.

4 (Deposition Exhibit No. 2 marked.)

5 Q. (BY MR. EDWARDS) Let me hand you a document
6 from the Natural Resources Defense Council pulled off
7 the Internet, entitled Arsenic in Drinking Water.
8 Would you take a moment to look at that, please.

9 A. Okay.

10 Q. What does that appear to be to you?

11 A. It appears to be a -- information, a fact
12 sheet about arsenic in drinking water.

13 Q. Okay. Would that be helpful for the court
14 to learn about facts that are relevant to what arsenic
15 can or does do when it's contained in your drinking
16 water?

17 MR. GREER: Objection. Form.

18 A. I'm not sure where -- how to answer that --
19 it contains information about arsenic in drinking
20 water. It can be used as a resource.

21 Q. (BY MR. EDWARDS) Fair enough.

22 A. I didn't use it, but it can be.

23 Q. Okay. There is a chart, it says, arsenic
24 level in tap water in parts per billion, or ppb,
25 approximate total cancer risk assuming two liters

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1 A. That is according to this paper and these
2 researchers.

3 Q. Of course.

4 A. Right.

5 Q. Of course. Now, if we go up to 25 parts per
6 billion, we're going to increasing the chances by one
7 in 200 according to this chart?

8 A. According to that chart.

9 Q. So that's like a half a percent of the time.
10 Right?

11 A. According to this chart.

12 Q. And if we get up to 50, one time in a
13 hundred you're going to develop one of these cancers.
14 Right?

15 A. I can't see that far.

16 Q. Sure.

17 A. Yes. According to this chart.

18 Q. According to this chart. So if that chart
19 is accurate, that would -- would that suggest to you
20 that arsenic levels in between ten and 50 pose a very
21 real elevated risk of someone developing cancer?

22 A. If this chart is accurate. I don't know
23 what -- I don't know how they came up with these
24 numbers.

25 Q. Those numbers, nevertheless, are consistent

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1 with your understanding of the elevated risks of
2 developing the cancers we talked about, though.
3 Right?

4 MR. GREER: Objection. Form.
5 Mischaracterizes her prior testimony and her report.

6 A. I came up -- we did the same thing -- we
7 determined -- I did.

8 Q. Right.

9 A. One of the things I evaluated was cancer
10 risk. Right.

11 Q. And you found that the cancer risks became
12 elevated. Right?

13 A. Yes.

14 Q. Okay. And I believe, in your report -- and
15 I'll let you see it. Do you have your report?

16 A. It's right here.

17 Q. Okay. In your report, you look at, you
18 know, the difference between the .10 level and the
19 levels -- the average levels at the Pack Unit. Right?

20 MR. GREER: Have you marked that as an
21 exhibit, or --

22 MR. EDWARDS: No, we're not marking
23 that as an exhibit.

24 MR. GREER: Okay.

25 MR. EDWARDS: It's got writing on it,

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1 Matt.

2 MR. GREER: Okay. Well, do you want a
3 blank one?

4 MR. EDWARDS: For now, what I want to
5 do is ask questions about it. Okay?

6 MR. GREER: Well, if you're going to
7 ask questions about it, let's get a blank one so she
8 can review it.

9 Q. (BY MR. EDWARDS) Are you comfortable
10 talking about your report, the report you prepared,
11 without reading it right now? In verbatim? Are you
12 comfortable talking about it?

13 A. Yes.

14 Q. Okay. Because you prepared it and it's your
15 expertise. Right?

16 A. Correct.

17 Q. Okay. If you need to reference that for any
18 reason, feel free. Okay? But you're not incompetent
19 or incapable of talking about the opinions that you --
20 that you have made without reading it -- the five
21 pages right now, are you?

22 A. I can talk about my -- the work I did, the
23 report I did without looking at it. I may not know --
24 remember --

25 Q. Of course.

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1 A. -- every number.

2 Q. Of course. Of course. Did you analyze
3 the -- the elevation of risk between the .10 parts or
4 the ten parts per billion standard and what was at the
5 Pack Unit?

6 A. Right. I compared the risk that the -- the
7 risk of -- the risk with the elevated arsenic level in
8 the groundwater to what the risk would be with arsenic
9 at ten parts per billion. Correct.

10 Q. And what was that opinion that you have --
11 that you determined?

12 A. That there is a risk when you drink at ten
13 parts per billion. The risk is less than the risk --
14 the -- it's a little bit less than what you -- what I
15 determined for people who drink the water at the Pack
16 Unit, for both three and nine years.

17 Q. Okay. It's significantly less. Right?

18 MR. GREER: Objection. Form.

19 Q. (BY MR. EDWARDS) Take a look at your
20 report.

21 MR. GREER: You just asked her to look
22 at her report. Can we not mark it as an exhibit?

23 MR. EDWARDS: Not right now.

24 A. I don't know if I would say it's
25 significantly less.

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1 A. He did not determine three liters a day.

2 Q. You did?

3 A. I determined three liters a day.

4 Q. And why did you choose three liters a day?

5 A. I knew three liters a day is on the high end
6 of what adults, children drink.

7 Q. Okay.

8 A. According to CDC's and Haynes' survey.

9 Q. Okay.

10 A. So...

11 Q. And it would be much higher in a prison
12 where the temperatures are sweltering and the only
13 fluid you're capable of drinking is water contained
14 with these arsenic levels. Right?

15 MR. GREER: Objection. Form.

16 MR. EDWARDS: What is the basis?

17 MR. GREER: The objection is that it
18 calls for speculation and it also assumes facts not in
19 evidence.

20 Q. (BY MR. EDWARDS) Were you ever told that
21 the inmates' only means of hydration is arsenic-laced
22 water at the Pack Unit?

23 MR. GREER: Objection. Assumes facts
24 not in evidence.

25 A. I was never told that.

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1 Q. (BY MR. EDWARDS) Okay. If the only water
2 that is available to inmates in the housing areas --
3 nonair-conditioned hot housing areas in the summer is
4 arsenic-laced well water, these inmates would be
5 drinking, I guess, many liters of arsenic-laced well
6 water?

7 MR. GREER: Objection. Form.

8 Q. (BY MR. EDWARDS) Would that be your
9 expectation?

10 MR. GREER: Objection. Form.

11 A. I don't know how much they would be
12 drinking.

13 Q. (BY MR. EDWARDS) Okay.

14 A. In these calculations, we assumed three
15 liters per day.

16 Q. All right. Okay. Was there any questioning
17 between you and Mr. Greer about how many liters a day
18 the prison system observed inmates drinking water?

19 A. No.

20 Q. Were there any discussions or questions
21 about whether or not water was always provided to the
22 inmates?

23 A. It was my recollection from conversations
24 that one way the prison was compensating or mitigating
25 the high temperatures was by providing ice water,

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1 so...

2 Q. And would be -- okay. They were attempting
3 to mitigate through the provision of ice water.

4 That's what you were told?

5 A. Correct. Uh-huh. Yes.

6 Q. All right. You -- all right. And you did
7 this analysis, and tell me what you -- what you
8 determined.

9 A. So we looked at -- I looked at a nine-year
10 interval.

11 Q. Uh-huh.

12 A. To take into account from 2000 time period
13 where there was elevated arsenic in the groundwater
14 that we know about, and then this two year period. So
15 if you start from now until approximate time when
16 they're going to put in a filtration system, those
17 were the two --

18 Q. Now, to be fair, you don't know if there was
19 arsenic in the groundwater in 2003, do you?

20 A. I do not.

21 Q. 2004? 2005?

22 A. Correct.

23 Q. Okay. Given that there were 37 parts per
24 billion in 2000 -- 5 is it? Or 6?

25 A. The first --

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1 Okay. Now, in addition to drinking the
2 water, these inmates would also be exposed to these
3 high levels of arsenic when they're showering. Right?

4 MR. GREER: Objection. Form.

5 MR. EDWARDS: Are you quibbling with
6 "high levels of arsenic"?

7 MR. GREER: Yeah. She's testified
8 numerous times that she doesn't believe that the
9 levels -- she would call them high.

10 Q. (BY MR. EDWARDS) Do you think 37 parts per
11 billion is a high level of arsenic in water?

12 A. I -- I don't think it's high enough to cause
13 noncancerous adverse health effect in -- and it does
14 increase cancer, but the level at which it increases
15 is very low.

16 Q. Well, it still increases the risk of cancer.
17 Right?

18 A. It does.

19 Q. That's not something someone should
20 purposefully do. Right? If they have a conscience, a
21 heart, or a brain?

22 MR. GREER: I'll object to the form.

23 You can answer if you can, Doctor.

24 A. Okay. So my personal opinion?

25 Q. (BY MR. EDWARDS) Yeah. Given that you have

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1 a conscience. Correct?

2 A. Yes.

3 Q. And a heart?

4 A. Yes.

5 Q. And a brain?

6 A. Yes.

7 Q. Okay. In your person opinion, is that
8 something someone -- any agency should do,
9 purposefully expose inmates to levels of arsenic that
10 you found at the Pack Unit for a period of eight, nine
11 or ten years?

12 MR. GREER: Same objection as
13 previously asserted. And let me also add, 601 through
14 602 and 701 through 704.

15 Go ahead, Doctor.

16 A. Again, this is my personal opinion. I don't
17 think anyone should expose anybody to something that
18 is harmful.

19 Q. (BY MR. EDWARDS) Well, and it's even worse
20 when you can easily prevent it. Right?

21 MR. GREER: Objection. Definitely
22 mischaracterizes the evidence.

23 Q. (BY MR. EDWARDS) Right?

24 A. So are there -- there are -- I don't know if
25 it's worse or not. I mean...

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(The requested text was read back.)

MR. GREER: And I will assert the same objections.

Go ahead.

A. I was going to say, can you repeat that again? No.

So -- I guess I just want to repeat that -- so based on these levels, I don't anticipate that there would be any noncancer adverse health effects. There is a slight increase in cancer risk with the assumptions I used, you know, drinking three liters a day over a nine-year period and over a three-year period. So above what you would expect if you just drank at the MCL, which also there is also a risk. And so I don't -- I wouldn't regard these levels as any kind of imminent health threat, but -- but I don't think it should be left alone either, you know. The water -- you shouldn't provide this water because it does cause an increase in risk.

Q. (BY MR. EDWARDS) And when you used the word "imminent," you mean immediate. Right?

A. Immediate.

Q. Okay. And when I hear you say that, that you don't think there is an imminent health risk of cancer, you're saying, look, if you drink this water

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1 for 30 days or something, it's not like you're
2 destined to get cancer. Right?

3 MR. GREER: Objection.
4 Mischaracterizes her testimony.

5 But go ahead and answer, Doctor.

6 A. By imminent risk, I don't think there is any
7 risk of drinking this water that would cause noncancer
8 health effects or cancer -- would increase your cancer
9 risk, but at a very, very low level.

10 Q. (BY MR. EDWARDS) Is it 3.4 cases per
11 100,000 and 1.5 cases per 10,000 people for a two- and
12 nine-year exposure period?

13 A. Is what I wrote?

14 Q. Yeah.

15 A. Then, yes, that's what I determined.

16 Q. Okay. Which would be a big deal to the
17 person that develops cancer. Right?

18 MR. GREER: Objection. Form.

19 Go ahead.

20 A. Right. I would -- cancer is a big deal to
21 anyone who gets it.

22 Q. (BY MR. EDWARDS) Okay.

23 A. Absolutely.

24 Q. In addition to exposure through drinking
25 water, inmates at the Pack Unit would necessarily get

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1 studies that suggest that dermal contact with
2 arsenic-laced water can cause skin problems and skin
3 lesions? If you're not, that's fine, but are you
4 aware?

5 A. So arsenic -- ingestion of arsenic can lead
6 to skin problems. That's one of the hallmark facts of
7 drinking a lot of -- of drinking arsenic at very high
8 levels, it causes skin problems.

9 Q. What kind of skin problems?

10 A. For example, it can lead to keratosis, which
11 is this hardening, darkening color of the skin.
12 Blackfoot disease.

13 Q. Anything else?

14 A. Those are the two things that come to mind.

15 Q. You also note vascular complications. Would
16 you explain that to the court, please?

17 A. One adverse health effect that you -- that
18 has been shown following arsenic exposure is impacts
19 to the cardiac system. So it can disrupt -- impacts
20 the vessels, blood vessels, and can lead to them
21 disrupting or bursting.

22 Q. That would seem to be -- to have a more
23 deleterious effect or negative effect on someone
24 suffering from hypertension. Would you agree with
25 that?

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1 Q. Okay. It looks like you looked at this
2 appendix right here? Or that was in the file that was
3 provided by your lawyers. Is that something --

4 A. Yeah, it was in my file. Correct.

5 Q. Okay. Do you agree that long-term exposure
6 to smaller amounts of arsenic is more common and can
7 increase the risk of developing cancer of the bladder,
8 lungs, skin, liver, kidney, or prostate?

9 A. So it doesn't say what smaller amounts are.

10 Q. Okay.

11 A. Long-term exposure to arsenic has been shown
12 to cause lung, skin, liver, kidney cancer. It's
13 pretty clear.

14 Q. Okay. Other health effects may include high
15 blood pressure, narrowing of the blood vessels, nerve
16 damage, anemia, diabetes, stomach upset, and skin
17 changes?

18 A. Those are some of the adverse health effects
19 you can -- correct.

20 Q. Do you know -- no one knows why it
21 contributes to diabetes. Is that correct?

22 A. That is correct. That's actually something
23 that is very new that they've just found out.

24 Q. They've found that -- that arsenic levels,
25 even at the rates that the Pack Unit is exposed, may

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1 contribute to the development of diabetes. Isn't that
2 correct?

3 MR. GREER: Objection.
4 Mischaracterizes her testimony --

5 A. I don't know -- I don't remember what the
6 levels are in that study.

7 Q. (BY MR. EDWARDS) Okay. Do you remember
8 reading the study?

9 A. I remember coming across the study, I
10 remember reading about the study. Right.

11 Q. Okay. Do you know how many people have
12 diabetes at the Pack Unit?

13 A. I do not.

14 Q. Do you know how many people have high blood
15 pressure at the Pack Unit?

16 A. I do not.

17 Q. Do you know how many people suffer from
18 hypertension at the Pack Unit?

19 A. I do not.

20 Q. Do you know how many people are elderly at
21 the Pack Unit?

22 A. I do not.

23 Q. I believe that -- without being too
24 repetitive, you would agree with this sentence, but I
25 want to make sure.

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1678ad13-6e59-40ad-8431-8e6ea4f4d91c

Plaintiffs' Preliminary Injunction

Appendix 283

Heidi K. Bojes, Ph.D. - 1/22/2016

1 More exposure to arsenic increases the
2 likelihood that health problems will occur. Reducing
3 exposure reduces the risk.

4 Is that something that you agree with?

5 A. Okay. I'm going to break that up into two
6 parts.

7 Q. Sure.

8 A. No exposure, you'll have no risk.

9 Q. Okay.

10 A. The only way you can have risk is if you're
11 exposed. Okay? What your risks are or what the
12 adverse health effects are following exposure depends
13 on a lot of factors. Right? How much, how often, who
14 you are, what form you're exposed.

15 Q. Do you agree with the sentence in this
16 appendix that you provided us: More exposure to
17 arsenic increases the likelihood that health problems
18 will occur.

19 A. I would say that it would be true for cancer
20 because it does increase the risk of cancer. But it
21 may or may not increase the risk of noncancer effects.

22 Q. Okay. Do you agree with this: If your
23 water contains between ten parts per billion and
24 50 parts per billion arsenic, your chance of
25 developing health problems increases.

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Plaintiffs' Preliminary Injunction

Appendix 284

Heidi K. Bojes, Ph.D. - 1/22/2016

1 preparation over the long term.

2 Did I read that correctly?

3 A. You read that correctly.

4 Q. Do you agree with that?

5 A. So I think the key point in that sentence is
6 "long term."

7 Q. What do you consider long term?

8 A. So I want to -- long term -- so I think
9 the -- the -- again, the long term, so -- you know,
10 from the report I did, three to nine years at these
11 levels, I agree that there will be an increased risk,
12 but I don't think there would be any noncancer risk.

13 MR. EDWARDS: And I say this
14 respectfully, that I have to object as nonresponsive
15 to that question.

16 Q. (BY MR. EDWARDS) Do you agree, as someone
17 who works for an agency that identifies water
18 problems, with the recommendation from the State of
19 Washington that its -- the members of its public not
20 drink water containing levels of arsenic between ten
21 parts per billion and 50 parts per billion or using
22 such water for food preparation over the long term?

23 A. I would agree with that statement.

24 Q. Okay. Now, in the -- it also has advice,
25 how can I reduce my exposure to arsenic from my well.

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Plaintiffs' Preliminary Injunction

Appendix 285

Heidi K. Bojes, Ph.D. - 1/22/2016

1 Correct?

2 A. Yes.

3 Q. And one such -- one such way to reduce the
4 exposure is to use bottled water, according to the
5 State of Washington. Correct?

6 A. I can barely see it, but, correct.

7 Q. Okay.

8 A. Yes. It says, use bottled water.

9 Q. That's one option. To the best of your
10 knowledge, the Pack Unit does not use that option.
11 Right?

12 MR. GREER: Objection. Assumes facts
13 not in evidence.

14 A. I don't know what the Pac Unit does.

15 Q. (BY MR. EDWARDS) Are you aware of any
16 evidence or suggestion that they use bottled water
17 during the summer months?

18 MR. GREER: Same objection.

19 Q. (BY MR. EDWARDS) At the Pack Unit?

20 A. I'm not aware. I don't even know --

21 Q. Another way they recommend is to treat the
22 well water.

23 A. Could I see --

24 Q. Do you see that?

25 A. Yes, I see it. Treat the well water.

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Plaintiffs' Preliminary Injunction

Appendix 286

Heidi K. Bojes, Ph.D. - 1/22/2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEITH COLE, JACKIE
BRANNUM, RICHARD KING,
DEAN ANTHONY MOJICA, RAY
WILSON, FRED WALLACE,
AND MARVIN RAY YATES,
INDIVIDUALLY AND ON
BEHALF OF THOSE
SIMILARLY SITUATED

Plaintiffs,

VS.

BRAD LIVINGSTON, IN HIS
OFFICIAL CAPACITY,
ROBERTO HERRERA, IN HIS
OFFICIAL CAPACITY, AND
THE TEXAS DEPARTMENT OF
CRIMINAL JUSTICE,

Defendants.

CIVIL ACTION NO.
4:14-cv-1698

* * * * *

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF
HEIDI K. BOJES, Ph.D.

JANUARY 22, 2016

* * * * *

I, BRENDA J. WRIGHT, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
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Plaintiffs' Preliminary Injunction

Appendix 287

Heidi K. Bojes, Ph.D. - 1/22/2016

1 That the witness, HEIDI K. BOJES, Ph.D., was
2 duly sworn by the officer and that the transcript of
3 the oral deposition is a true record of the testimony
4 given by the witness;

5 I further certify that pursuant to Federal
6 Rules of Civil Procedure, Rule 30(e)(1)(A) and (B) as
7 well as Rule 30(e)(2) that the signature of the
8 deponent:

9 ___X___ was requested by the deponent and/or a
10 party before completion of the deposition and is to be
11 returned within 30 days from date of receipt of the
12 transcript. If returned, the attached Changes and
13 Corrections and Signature pages contain any changes
14 and the reasons therefor;

15 _____ was not requested by the deponent and/or a
16 party before the completion of the deposition.

17 That \$_____ is the deposition
18 officer's charges for preparing the original
19 deposition transcript and any copies of exhibits,
20 charged to PLAINTIFFS;

21 That pursuant to information given to the
22 deposition officer at the time said testimony as
23 taken, the following includes all parties of record:
24
25

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Plaintiffs' Preliminary Injunction

Appendix 288

Heidi K. Bojes, Ph.D. - 1/22/2016

1 For the Plaintiffs:

2 Mr. Jeff Edwards
3 THE EDWARDS LAW FIRM
4 The Haehnel Building
5 1101 E. 11th Street
6 Austin, Texas 78702
7 512-623-7727/512-623-7729 (fax)
8 jeff@edwards-law.com
9 lindsey@edwards-law.com
10 sean@edwards-law.com
11 scott@edwards-law.com

12 For the Defendant(s) Texas Department of Criminal
13 Justice, et al.:

14 Mr. Bruce R. Garcia
15 -and-
16 Ms. Cynthia L. Burton
17 Assistant Attorney General
18 Law Enforcement Defense Division
19 P.O. Box 12548
20 William P. Clements Building
21 300 West 15th Street
22 Seventh Floor
23 Austin, Texas 78701
24 512-463-2080/512-936-2109 (fax)
25 bruce.garcia@texasattorneygeneral.gov
cynthia.burton@texasattorneygeneral.gov
daniel.neuhoff@texasattorneygeneral.gov
matthew.greer@texasattorneygeneral.gov
james.rheams@texasattorneygeneral.gov
mara.kauff@texasattorneygeneral.gov

18 I further certify that I am neither attorney
19 nor counsel for nor related to nor employed by any of
20 the parties to the action in which this deposition is
21 taken;

22 Further, I am not a relative nor an employee of
23 any attorney of record in this cause, nor am I
24 financially or otherwise interested in the outcome of
25 the action.

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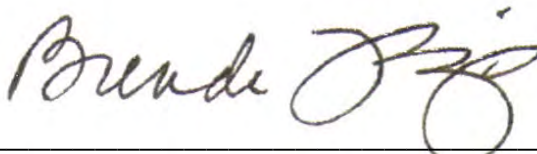
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Plaintiffs' Preliminary Injunction

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Heidi K. Bojes, Ph.D. - 1/22/2016

1 Certified to by me this 15TH day of FEBRUARY,
2 2016.



3
4 BRENDA J. WRIGHT, Texas CSR No. 1780
5 Expiration Date: 12-31-16
6 WRIGHT WATSON & ASSOCIATES
7 Firm Registration No. 225
8 Expiration Date: 12-31-17
9 1250 S. Capital of Texas Highway
10 Building 3, Suite 400
11 Austin, Texas 78746
12 512-474-4363/512-474-8802 (fax)
13 www.wrightwatson.com
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15
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Plaintiffs' Preliminary Injunction

Appendix 290

Exhibit 19

From: Brady, Pamella J.
Sent: Tuesday, July 24, 2012 8:02 AM
To: jeff.pringle@tdcj.state.tx.us
Cc: carol.cozart@tdcj.state.tx.us
Subject: FW: RE:
Attachments: Hydration.docx

Warden Pringle,

Please see attached flyer related to the importance of drinking water. Dr. Adams has received permission from Dr. Lithicum to distribute this to all units. I would like your permission to post this in the housing areas. Thanks.

Pam Brady, MSW
Practice Manager
Hutchins State Jail
UTMB Correctional Managed Care
(972)225-1304 ext 6264

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From: Jarrett, W. E.
Sent: Monday, July 23, 2012 9:59 AM
To: Tribble, Curtis; Stewart, Jeanette F.; Easter, Vicky; McGowan, Rebecca; Outlaw, Patricia A.; Iredell, Debra L.; Buro, Angie M.; Turner, Darlene B.; Gloor, Debra L.; Mott, Khari S.; Martisek, Rudy A.; Stokes, Corrine B.; Saucedo, Denise I.; Freeman, Jackie D.; Saulter, Julia E.; McLearen, Kimberly S.; Davis, Nedra; Brady, Pamella J.; Ogden, Paula M.; Romine, Rachel B.; Pollard, Valencia A.; Stalinsky, Drew E.
Cc: Robison, Justin R.; Saenz, Hilario; Simental, Joe A.; Robison, Jerri D.; Brown, Paul V.; Reinecke, Scott E.; Morris, Susan M.
Subject: FW: RE:

Team,

Please review Dr. Adams' e-mail below about posting the Hydration memo and comply if you have not already done so.

Thanks

W. EARL JARRETT
Region 1, Operations Manager
University of Texas Medical Branch
(512) 268-0079 X135
wejarret@utmb.edu

From: Adams, Charles D.

Sent: Monday, July 23, 2012 9:03 AM

To: Morris, Susan M.; Moultrie, Jane M.; Vincent, Bobby M.; Brown, Paul V.; Robison, Jerri D.; Jarrett, W. E.; Saenz, Hilario; Chavers, Jason L.; Dalecki, Robert E.
Subject: FW: RE:

Good Morning,

Please remind your units to place this hydration memo in the housing areas, after getting the unit warden's permission to do so. I have learned that some units have put it in the clinic but not in the housing/dorm areas.

If a warden does not allow this, please let me know.

Thanks,

Danny

Charles D. (Danny) Adams, MD, MPH

Senior Medical Director- Outpatient Division UTMB-CMC

From: Adams, Charles D.

Sent: Friday, July 13, 2012 12:52 PM

To: Moultrie, Jane M.; Morris, Susan M.; Vincent, Bobby M.; Wright, Gary G.; Chavers, Jason L.; Dalecki, Robert E.; Jarrett, W. E.; Eubank, Gary J.; Smock, Stephen R.; Robison, Justin R.

Cc: Abke, Sarah J.; Adams, Glenda M.

Subject: FW: RE:

Good Afternoon,

This attachment was created by PM Sarah Abke (Pack, Luther, and Hamilton units). It has been approved by Dr. Lannette Linthicum, to be posted in the clinic and housing areas (maybe the dining room, too). I believe that this is a very good thing to do, especially in the summer. I am always amazed how little water our patients drink and what they consider enough water/day (usually something like 4 or 5 glasses a day). Anyway, every little bit helps....

Thank you, Ms. Abke.

Please post this ASAP.

Thanks,

Danny

Charles D. (Danny) Adams, MD, MPH

Senior Medical Director- Outpatient Division UTMB-CMC

Stay Hydrated

Daily, drink 1 gallon of water

If extreme heat hits or you are working in the heat, daily drink 2 gallons of water

How much is a gallon of water?

16 cups

*****Unless medically instructed to limit fluid intake*****

Este Hidratado

Cada dia tome uno (1) galon de agua

Si el calor es extreme o esta trabajando en el calor tome dos (2) galones de agua

Cuanto es un galon de agua?

16 tazas

*****A menos listed tiene limitados liquidos ordenados por medico *****

Exhibit 20

AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF GRIMES §

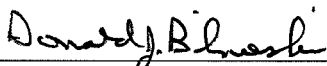
BEFORE ME, the undersigned authority, personally appeared **Donald Bilnoski**, known to me to be a credible person over the age of 18 years, who, being duly sworn by me, did depose and say that the following is true and correct:

“My name is **Donald Bilnoski**, I am of sound mind; capable of making this affidavit; and I am authorized to make this affidavit in the capacity herein stated. I am personally acquainted with the facts herein stated.

“I am employed as **Assistant Warden**; for the Texas Department of Criminal Justice (“TDCJ”) Pack Unit located in Navasota, Texas, and do hereby certify that I am the custodian of records maintained in the regular course of business of the TDCJ.

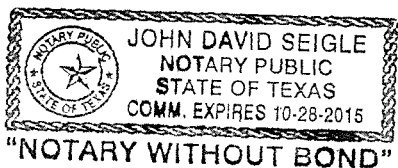
“I have reviewed the records you have requested; in connection with **D. Bailey, et al v. B. Livingston, et al, cause number 4:14-CV-1698**; and hereby certify that the attached copies of documents are true and correct copies of the original records now on file in my custody. I further certify that the records attached hereto are maintained in the usual and regular course of business at the TDCJ. The entries made and/or documents created were created at or about the time of the occurrence, or reasonable soon thereafter, by an employee or representative of TDCJ with knowledge of the act, event, condition, opinion, or diagnosis reflected in the records, and that such records are maintained on each and every offender confined here.

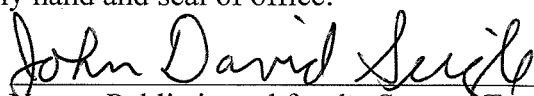
“Attached are copies of **all signs posted for officers and offenders warning of high temperature, heat related symptoms, and what to do for relief; heat card carried by officers telling them physical symptoms, and what to do for relief; and job assignments for the offenders who deliver ice and/or water.**



Donald Bilnoski, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on September 8, 2014, by the said **Donald Bilnoski** to certify which, witness my hand and seal of office:





Notary Public in and for the State of Texas
John D. Seigle

SURVIVAL GUIDE

GUÍA DE
SUPERVIVENCIA

REFRESH. REHYDRATE. REPLENISH.
REFRESCAR, REHIDRATAR. REPONER.

Drink water often

BEBER AGUA CON FRECUENCIA

Rest in the shade

DESCANSAR EN LA SOMBRA

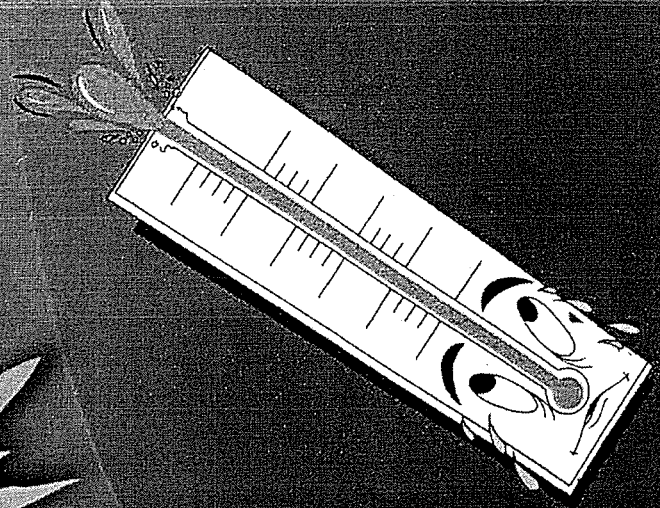
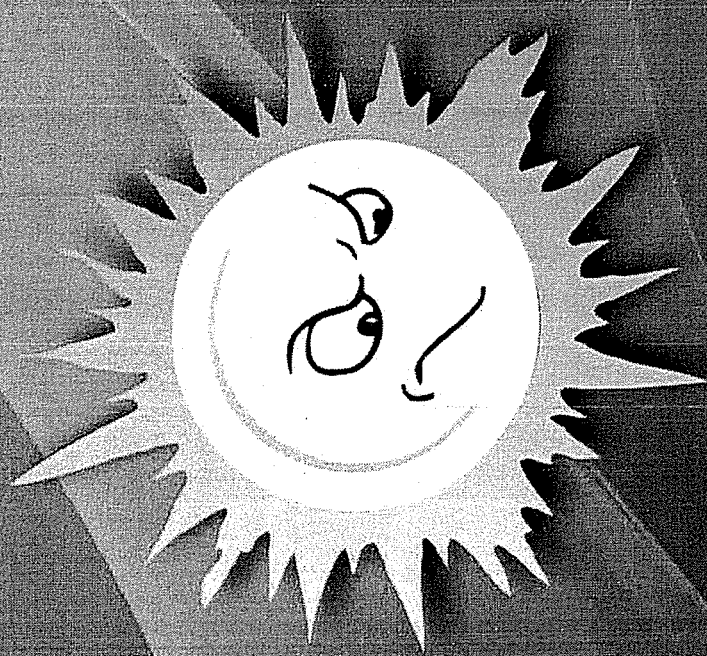
Report heat symptoms early

REPORTAR TEMPRANO LOS SINTOMAS DE CALOR

Know what to do in an emergency

SABER QUE HACER EN UNA EMERGENCIA

DRINK
TOMA
WATER
AGUA



REFRESH. REHYDRATE. REPLENISH.

REFRESCAR. REHIDRATAR. REPONER.

Heat Related Illness Prevention
PREVENCIÓN DE ENFERMEDAD RELACIONADA
AL CALOR

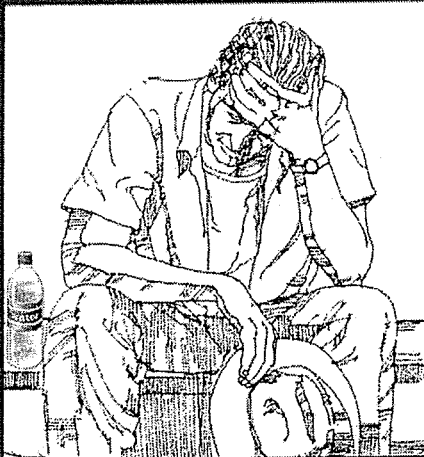


Drink water even if you aren't thirsty every 15 minutes.

Toma agua cada 15 minutos aun si no tienes sed.

Rest in the shade.

Descansa en la sombra



Look out for one another.

Cuidarse uno al otro.



Dehydration Urine Color Chart

Tabla de Color de Orina por Deshidratación

The following Dehydration Urine Color Chart will help you use your urine color as an indicator of your level of dehydration and what actions you should take to help return your body back to a normal level of hydration.

La siguiente Tabla de Color de Orina por Deshidratación le ayudará a usar el color de su orina como un indicador de su nivel de deshidratación y que acciones debes tomar para ayudar a que tu cuerpo regrese a un nivel normal de hidratación.

Doing ok. You're probably well hydrated. Drink water as normal.

Haciendo bien. Te estás probablemente bien hidratado. Toma agua como es normal.

You're just fine. You could stand to drink a little water now, maybe a small glass of water.

Tu estás muy bien. Te puedes permitir a tomar un poco de agua ahora. Puede ser un vaso pequeño de agua.

Drink about 1/2 bottle of water (1/4 liter) within the hour, or drink a whole bottle (1/2 liter) of water if you're outside and/or sweating.

Toma cerca de 1/2 botella de agua (1/4 litro) en la hora, o toma una botella completa (1/2 litro) de agua si estás afuera y/o sudando.

Drink about 1/2 bottle of water (1/4 liter) right now, or drink a whole bottle (1/2 liter) of water if you're outside and/or sweating.

Toma cerca de 1/2 botella de agua (1/4 litro) justo ahora, o toma una botella completa de agua (1/2 litro) de agua si estás afuera y/o sudando.

Drink 2 bottles of water right now (1 liter). If your urine is darker than this and/or red or brown, then dehydration may not be your problem. See a doctor.

Toma 2 botellas de agua justo ahora (1 litro). Si tu orina es más oscura que esta y/o roja o café, entonces deshidratación puede no ser tu problema. Consulta un doctor.



PREVENT HEAT RELATED ILLNESS
PREVENIR ENFERMEDAD RELACIONADA AL CALOR

DRINK WATER
TOMA AGUA

REFRESH. REHYDRATE. REPLENISH.
REFRESCAR. REHIDRATAR. REPONER.

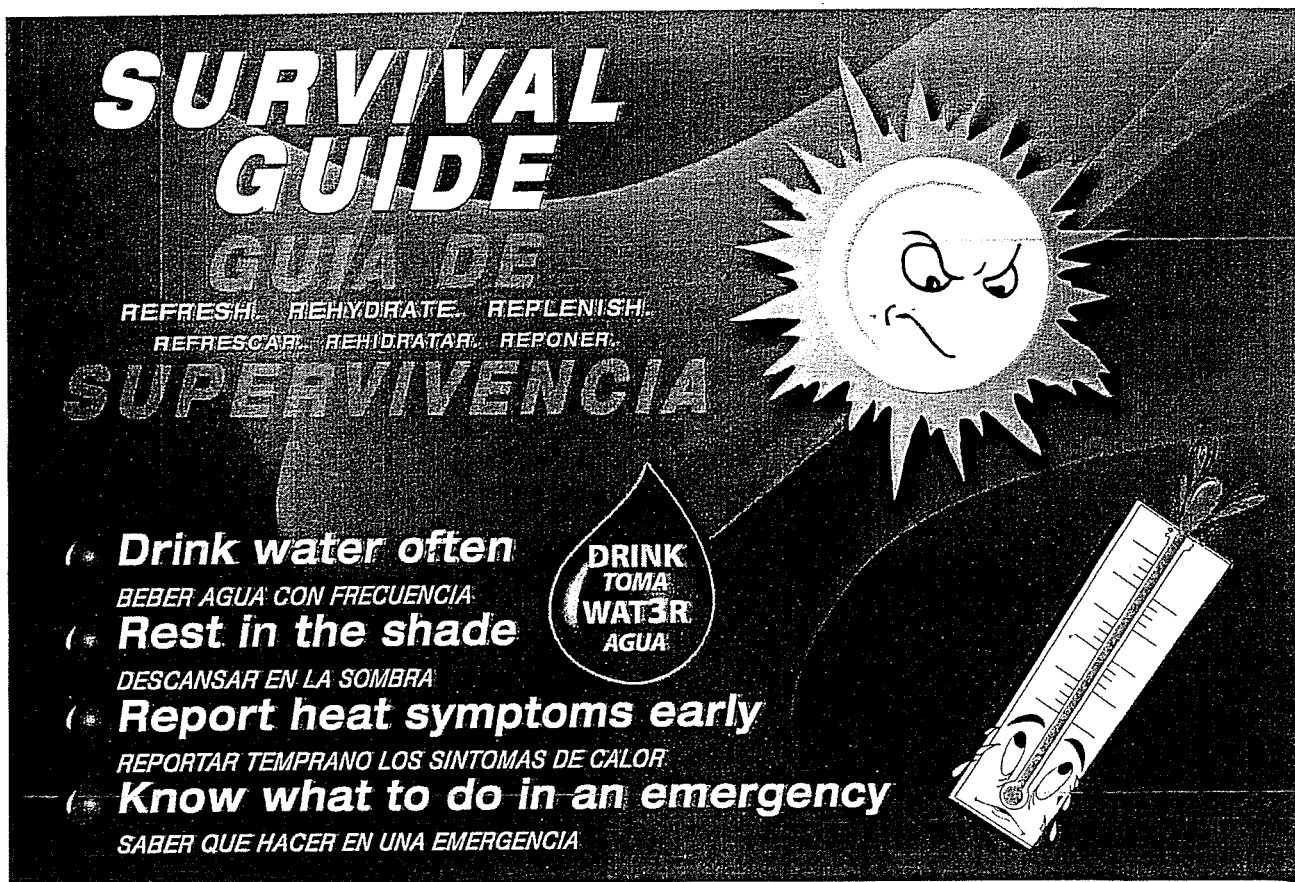
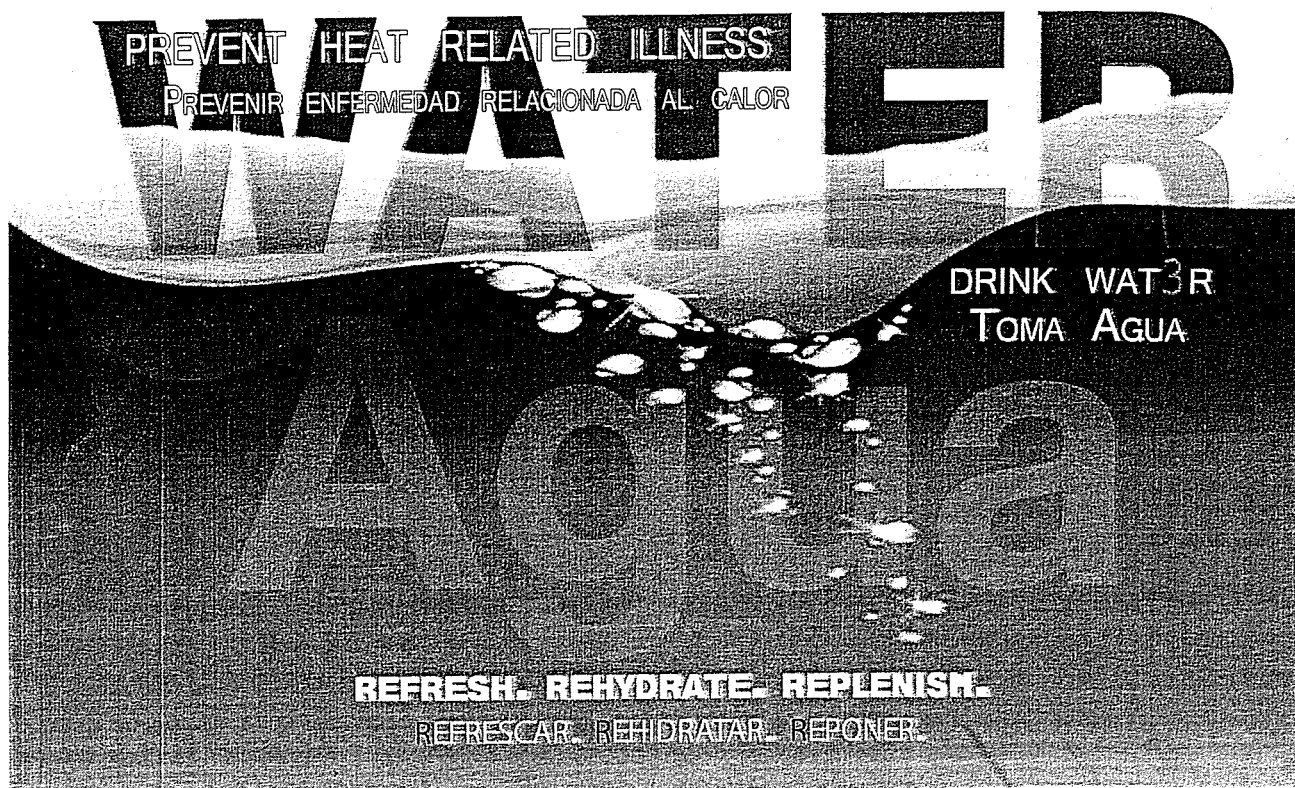


Exhibit 21

From: Adams, Charles D.
Sent: Tuesday, May 06, 2014 9:43 AM
To: Thompson, Jill A.
Subject:
Attachments: Heat-Related%20Illnesses%202011[1].ppt; Regional20Medical%20Director%20Duties[1].doc; TDCJ blanket content.pdf; TDCJ Blankets.pdf; WATER.docx

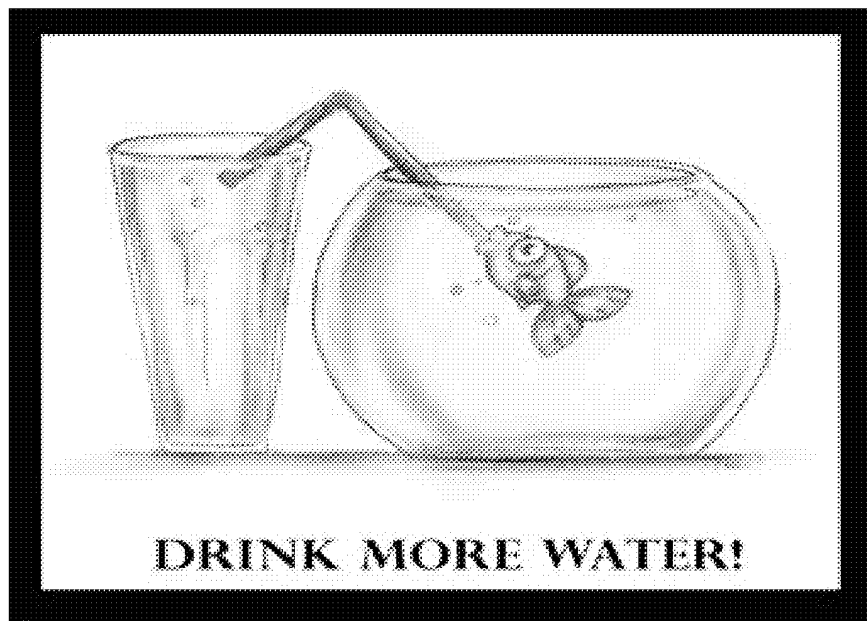
Jill,

You may want to keep some of these to share with Dr. Smith and my replacement.

Charles D. (Danny) Adams, MD, MPH
Senior Medical Director - Outpatient Services
UTMB-CMC

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**WHEN IT'S HOT,
DRINK A LOT.**



**WHEN IT'S HOTTER,
DRINK MORE
WATER!**

Exhibit 22

Fausto Avila, M.D. - 3/5/2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY
YATES, KEITH COLE, and
NICHOLAS DIAZ, individually
and on behalf of those
similarly situated,

Plaintiffs,

v.

BRAD LIVINGSTON, in his
official capacity, ROBERTO
HERRERA, in his official
capacity, and TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE

Defendants.

CIVIL ACTION NO.
4:14-cv-1698

ORAL DEPOSITION OF

FAUSTO AVILA, M.D.

March 5, 2015

Volume I

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

Fausto Avila, M.D. - 3/5/2015

1 A. He has Parkinson, yes.

2 Q. So that warning for him really isn't all that
3 helpful, is it?

4 A. No.

5 Q. Now, for those healthy patients where water -- well,
6 one of the solutions, I suppose.

7 Do you know what the EPA is?

8 A. The EPA?

9 Q. Yeah.

10 A. No.

11 Q. Have you ever heard of the Environmental Protection
12 Agency of the United States of America?

13 A. Yes.

14 Q. Okay. Are you familiar with what their job is as an
15 agency?

16 A. No.

17 Q. Okay. Do you know what arsenic is?

18 A. It's a metal, yes.

19 Q. Is it something that you should drink?

20 A. No.

21 Q. Okay. Are you aware that the Environmental
22 Protection Agency has determined that the level of arsenic in
23 the water at the Pack Unit is nearly twice times -- two times
24 it's recommended safe level?

25 A. No, I have not.

WRIGHT WATSON & ASSOCIATES

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4eb62001-dc21-4599-a399-c660e21aa7d5

Plaintiffs' Preliminary Injunction

Appendix 306

Fausto Avila, M.D. - 3/5/2015

1 Q. Okay. Nobody from Texas Department of Criminal
2 Justice has ever told you that the drinking water here is twice
3 the level of what the EPA recommends as safe?

4 MS. BURTON: Objection as to time and place.

5 Q. (BY MR. EDWARDS) Ever.

6 A. No.

7 Q. Okay. Would you agree with me that when you're
8 telling people "Hydration is the key," you ought to have safe
9 drinking water?

10 A. Yes.

11 Q. Okay. You don't give bottles of water out here to
12 the prisoners, do you?

13 A. No.

14 Q. Do you know if TDCJ gives Ethos water at Starbucks or
15 Nice other water at some grocery store to prisoners?

16 A. No.

17 Q. They drink out of the tap, right?

18 A. Yes.

19 Q. Do you know where that tap water comes from at the
20 Pack Unit?

21 A. From Navasota, I suppose.

22 Q. Now, to be fair, to your knowledge, does UTMB have
23 anything to do with the well water that's provided to the
24 prisoners at the Pack Unit?

25 A. No.

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
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Plaintiffs' Preliminary Injunction

Appendix 307

Fausto Avila, M.D. - 3/5/2015

1 Q. Do you know that arsenic in drinking water causes
2 bladder, lung, and skin cancer and may cause kidney and liver
3 cancer?

4 MS. HANEY: Objection to the extent it's
5 compound.

6 Q. (BY MR. EDWARDS) Would you like me to break it down
7 disease by disease? Let's do it that way.

8 Do you know if arsenic in drinking water can
9 cause bladder cancer?

10 A. Yes.

11 Q. It can, can't it?

12 A. Yes.

13 Q. Do you know if arsenic in drinking water can cause
14 lung cancer?

15 A. No.

16 Q. You have no idea, one way or the other. Fair?

17 A. Yes.

18 Q. Okay. Do you know if arsenic in drinking water can
19 cause skin cancer?

20 A. Yes.

21 Q. It can, correct?

22 A. That's correct.

23 Q. Do you know if arsenic in drinking water can cause
24 kidney cancer?

25 A. No.

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Plaintiffs' Preliminary Injunction

Appendix 308

Fausto Avila, M.D. - 3/5/2015

1 Q. Okay. You just don't know, to be fair, correct?

2 A. I don't know.

3 Q. Do you know if arsenic in drinking water can cause
4 liver cancer?

5 A. No.

6 Q. To be fair, you just don't know, correct?

7 A. I don't know.

8 Q. Okay. Do you know if arsenic in drinking water can
9 harm the central and peripheral nervous systems?

10 A. Yes.

11 Q. Okay. Do you know if arsenic in drinking water can
12 harm the heart --

13 A. No.

14 Q. -- or blood vessels?

15 A. No, I don't know.

16 Q. Okay. And I assume, since you know it can cause skin
17 cancer, you know that it can also cause serious skin problems,
18 right?

19 A. Yes.

20 Q. You ever seen a big warning about what the EPA says
21 about the drinking water at the Pack Unit ever?

22 A. No.

23 Q. Assuming that the Environmental Protection Agency of
24 the United States of America has something to do with
25 regulating the amount of toxic contents in water, don't you

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Plaintiffs' Preliminary Injunction

Appendix 309

Fausto Avila, M.D. - 3/5/2015

1 think that the medical department at the Pack Unit ought to be
2 brought up to speed with whether or not the drinking water
3 exceeds the EPA standard for arsenic levels?

4 MS. HANEY: I'm going to object to the extent it
5 calls for speculation by Dr. Avila.

6 MS. BURTON: And I'm going to object that it
7 assumes facts not in evidence.

8 THE WITNESS: I think that the corporation has
9 been addressed by the government.

10 THE REPORTER: I'm sorry? What was that?

11 THE WITNESS: If the function of this
12 organization is to protect the people, the government should be
13 certainly involved --

14 Q. (BY MR. EDWARDS) Yeah.

15 A. -- but I have not received any information to that
16 point. I have been drinking this water for four years now.

17 Q. Perhaps you should stop.

18 MS. BURTON: Objection to the sidebar.

19 MR. EDWARDS: And I'll withdraw that.

20 Q. (BY MR. EDWARDS) Are you aware that this -- that
21 Warden Herrera and the Texas Department of Criminal Justice
22 have received multiple letters from the EPA regarding the
23 levels of arsenic in the drinking water here?

24 A. No, I'm not.

25 Q. Are you aware that the Texas Department of Criminal

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Plaintiffs' Preliminary Injunction

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Fausto Avila, M.D. - 3/5/2015

1 Justice or Warden Herrera has received any letter from any
2 regulatory body concerning the arsenic levels in the water at
3 the Pack Unit?

4 A. No, I am not.

5 Q. Are you aware of any attempts by Texas Department of
6 Criminal Justice for Warden Herrera to fix this situation and
7 repair the well so that the arsenic levels go down?

8 A. No, I don't.

9 Q. Now, I understand that you have no idea if what I'm
10 telling you is true, okay, but if it is true, doesn't that
11 impact the care and advice you need to give patients?

12 MS. HANEY: I object to the extent it calls for
13 speculation.

14 THE WITNESS: I don't have an answer for that.

15 Q. (BY MR. EDWARDS) Okay. Well, wouldn't it obligate
16 you to talk to Warden Herrera, "Hey, is this true?"

17 A. I don't see -- if the corporation for the government
18 have this information, I think that action should be taken.

19 Q. An action --

20 A. Not exactly by me.

21 Q. Of course. Of course. Of course.

22 Again, I think we established that you don't
23 have the power to divert the water to a different source,
24 right?

25 A. That's correct.

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Plaintiffs' Preliminary Injunction

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Fausto Avila, M.D. - 3/5/2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY
YATES, KEITH COLE, and
NICHOLAS DIAZ, individually
and on behalf of those
similarly situated,

Plaintiffs,

v.

BRAD LIVINGSTON, in his
official capacity, ROBERTO
HERRERA, in his official
capacity, and TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE

Defendants.

CIVIL ACTION NO.
4:14-cv-1698

* * * * *

REPORTER'S CERTIFICATION
DEPOSITION OF DR. FAUSTO AVILA, M.D.
March 5, 2015
VOLUME I

* * * * *

I, ABIGAIL L. GUERRA, Certified Shorthand Reporter,
in and for the State of Texas, hereby certify to the following:

That the witness, DR. FAUSTO AVILA, M.D., was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by the
witness;

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Fausto Avila, M.D. - 3/5/2015

1 I further certify that pursuant to Federal Rules of
2 Civil Procedure (30)(e)(1)(A) and (B) as well as Rule
3 (30)(e)(2) that the signature of the deponent:

4 I further certify that pursuant to FRCP Rule
5 30(f)(1) that the signature of the deponent:
6

7 X was requested by the deponent or a party before
8 the completion of the deposition and that signature is to be
9 before any notary public and returned within 30 days from date
10 of receipt of the transcript.

11 If returned, the attached Changes and Signature Page
12 contains any changes and the reasons therefore:
13

14 _____ was not requested by the deponent or a party
15 before the completion of the deposition.
16

17 That \$ _____ is the deposition
18 officer's charges for preparing the original deposition
19 transcript and any copies of exhibits, charged to PLAINTIFFS
20 DAVID BAILEY, MARVIN RAY YATES, KEITH COLE, and NICHOLAS DIAZ,
21 individually and on behalf of those similarly situated;
22

23 That pursuant to information given to the deposition
24 officer at the time said testimony was taken, the following
25 includes all parties of record:

WRIGHT WATSON & ASSOCIATES

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Plaintiffs' Preliminary Injunction

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Fausto Avila, M.D. - 3/5/2015

1 FOR THE PLAINTIFFS:

2 DAVID BAILEY, MARVIN RAY YATES, KEITH COLE, and NICHOLAS
DIAZ, individually and on behalf of those similarly situated,
3 Mr. Jeff Edwards
EDWARDS LAW
4 1101 East 11th Street
The Haehnel Building
Austin, Texas 78702
5 Phone: (512) 623-7727

6 FOR THE DEFENDANT:

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

7 Ms. Cynthia L. Burton
8 OFFICE OF ATTORNEY GENERAL
300 West 15th Street
9 7th Floor
Austin, Texas 78701
10 Phone: (512) 463-2080

11 FOR THE WITNESS:

FAUSTO AVILA, M.D.,

12 Ms. J. Lee Haney
13 Ms. Shanna Molinare
Mr. Marcus Sanders
14 OFFICE OF ATTORNEY GENERAL
300 West 15th Street
15 7th Floor
Austin, Texas 78701
16 Phone: (512) 463-2080

17 I further certify that I am neither attorney, nor
18 counsel for, nor related to, nor employed by any of the parties
19 or attorneys to the action in which this deposition was taken;

20 Further, I am not a relative, nor an employee of any
21 attorney of record in this cause, nor am I financially or
22 otherwise interested in the outcome of the action.

23
24
25
WRIGHT WATSON & ASSOCIATES

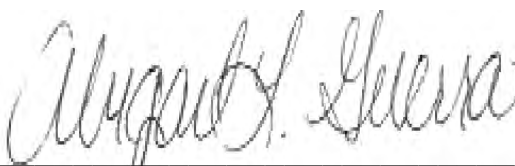
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Plaintiffs' Preliminary Injunction

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Fausto Avila, M.D. - 3/5/2015

1 Certified to by me this 24th day of March, 2015.

2
3
4 

5
6 ABIGAIL GUERRA, Texas CSR 9059

7 Expiration Date: 12/31/15

8 WRIGHT WATSON & ASSOCIATES

9 Firm Registration No. 225

10 Expiration Date: 12-31-15

11 1250 S. Capital of Texas Highway

12 Building 3, Suite 400

13 Austin, Texas 78746

14 512-474-4363/512-474-8802 (fax)

15 www.wrightwatson.com

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Job No. 150305AG

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Exhibit 23

Texas Commission on Environmental Quality	Office of Water	Public Drinking Water Section
County Map of TX	Water System Search	Office of Compliance and Enforcement

Water System Detail

Water System Facilities	Violations Enforcement Actions	TCR Sample Results	TTHM HAA5 Summaries
Source Water Assessment Results	Assistance Actions	Recent Positive TCR Results	PBCU Summaries
Sample Points	Compliance Schedules	Other Chemical Results	Chlorine Summaries
Sample Schedules / FANLs / Plans	TOC/Alkalinity Results	Chemical Results: Sort by: Name Code	Turbidity Summaries
Site Visits Milestones	LRAA (TTHM/HAA5)	Recent Non-TCR Sample Results	TCR Sample Summaries
Operators All POC			

Glossary

Water System Detail Information

Water System No.:	TX0930034	Federal Type:	C
Water System Name:	TDCJ W PACK UNIT	Federal Source:	GW
Principal County Served:	GRIMES	System Status:	A
Principal City Served:		Activity Date:	01-01-1913

Result List by Analyte

Analyte Code	Analyte Name	Facility	Sample Point	Sample Collection Date	TCEQ Sample ID	Laboratory Sample ID	Concentration	Method	Detection Limit	Current Maximum Contaminant Level Allowed (MCL)
1005	ARSENIC	EP001	TRT-TAP	02/08/2016	1627773	AD22388	0.0124 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	10/26/2015	1534586	AD11661	0.0148 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	09/21/2015	1534382	AD07735	0.0241 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	05/14/2015	1534178	AC91976	0.026 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	03/10/2015	1523070	AC83421	0.0251 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	11/10/2014	1428852	AC71597	0.0238 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	08/12/2014	1495641	AC63052	0.024 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	05/02/2014	1428114	AC52838	0.0238 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	01/29/2014	1428173	AC40601	0.0213 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	11/13/2013	1327491	AC35021	0.0224 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	09/04/2013	1327297	AC29062	0.0084 MG/L	200.8		0.01 MG/L

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1005	ARSENIC	EP001	TRT-TAP	05/22/2013	1327091	AC20191	0.0214 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	03/11/2013	1326799	AC12856	0.0205 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	12/27/2012	1291059	AC07323	0.0209 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	09/12/2012	1229520	AC00654	0.0299 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	04/18/2012	1229329	AB87275	0.0288 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	02/02/2012	1212320	AB80024	0.0214 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	11/17/2011	1167414	AB74816	0.026 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	09/01/2011	1167228	AB68849	0.0345 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	05/17/2011	1167044	AB56952	0.0186 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	02/16/2011	1118740	AB48161	0.0437 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	11/10/2010	1013501	AB42267	0.0144 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	09/03/2010	1013502	AB36842	0.0149 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	04/13/2010	1013504	AB24952	0.0314 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	02/16/2010	1013503	AB21055	0.045 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	10/30/2009	0914562	AB14147	0.0273 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	08/19/2009	0914561	AB09018	0.0357 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	06/01/2009	0914560	AB02435	0.0287 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	03/09/2009	0914559	AA93074	0.0366 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	11/04/2008	0816550	AA82213	0.0319 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	08/25/2008	0816549	AA73074	0.0233 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	06/23/2008	0816548	AA65192	0.0248 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	03/13/2008	0816547	AA54903	0.0264 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	12/31/2007	0715074	AA47924	0.0256 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	08/28/2007	0715073	AA29976	0.0207 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	04/25/2007	0715072	AA11675	0.0309 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	02/22/2007	0715071	AA08315	0.0272 MG/L	200.8		0.01 MG/L

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1005	ARSENIC	EP001	TRT-TAP	12/14/2006	0633655	AA05090	0.0099 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	08/03/2006	0633654	EP616208	0.0265 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	05/16/2006	0633656	EP610016	0.0277 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	03/22/2006	0605926	EP606379	0.0365 MG/L	200.8		0.01 MG/L
1005	ARSENIC	EP001	TRT-TAP	09/03/2003		0309054-02	Less than Detection Limit	200.8	0.002 MG/L	0.01 MG/L

Total Number of Records Fetched = 42

Notes:

Analyte results are presented sorted by date then TCEQ Sample ID Number.

Single Sample MCL Violations are noted in **Bold Red** in the Concentration column.

Exhibit 24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, MARVIN RAY)	
YATES, KEITH COLE, and)	
NICHOLAS DIAZ,)	
individually and on)	
behalf of those similarly)	CIVIL ACTION NO.
situated,)	4:14-cv-1698
)	
Plaintiffs,)	
)	
VS.)	
)	
BRAD LIVINGSTON, in his)	
official capacity,)	
ROBERTO HERRERA, in his)	
official capacity, and)	
TEXAS DEPARTMENT OF)	
CRIMINAL JUSTICE,)	
)	
Defendants.)	

ORAL DEPOSITION OF
ROBERTO HERRERA
JANUARY 14, 2015

ORAL DEPOSITION OF ROBERTO HERRERA, produced as a witness at the instance of the PLAINTIFFS, and duly sworn, was taken in the above-styled and numbered cause on JANUARY 14, 2015, from 9:57 a.m. to 6:20 p.m., before Linda Rayburn, CSR, RPR, CLR in and for the State of Texas, reported by machine shorthand, at the Pack Unit, 2400 Wallace Pack Road, Navasota, Texas, pursuant to the Federal Rules of Civil Procedure and any provisions stated on the record or attached hereto.

1 A. No.

2 **Q. Does that concern you?**

3 A. Would what concern me?

4 **Q. If there were fights over access to water.**

5 A. Might think that there may be a problem.

6 **Q. Have you ever been told there's arsenic in the**
7 **water at the Pack Unit?**

8 A. Yes.

9 **Q. When were you told that?**

10 A. I've been told it different times before I got
11 to the unit --

12 **Q. Is it true?**

13 A. -- and when I got to the unit.

14 To what I understand it is. But the water
15 has been tested and it's consumable. It's safe to drink.

16 **Q. Who tested it and determined it was safe to**
17 **drink if it has arsenic in it?**

18 A. That was again done up above us.

19 **Q. Do you know who?**

20 A. No --

21 **Q. Do you know what --**

22 A. -- I don't know who does it.

23 **Q. I'm sorry.**

24 **Do you know what division it would be --**

25 A. Probably --

1 Q. -- who we would talk to?

2 A. Probably facilities.

3 Q. Have inmates ever complained to you about the
4 potential dangers of arsenic in the drinking water?

5 A. Yes.

6 Q. And what's your response?

7 A. "It's been tested. It's safe."

8 Q. Do the officers -- do you ever see the officers
9 drinking the same water that the inmates drink?

10 A. Yes.

11 Q. Do the officers generally --

12 A. Now, is it out of the same can; is that what
13 you're asking me? Because we have cans -- we have cans
14 for officers too down the hallway.

15 Q. Okay. So the same water goes to the officers
16 that goes to the inmates?

17 A. Yes.

18 Q. Is it your experience that most of the officers
19 bring in bottled water or Gatorade?

20 A. I let them bring in water.

21 Q. Is it your experience that most of them bring
22 in their own water?

23 A. No, because they'll make the purchase in the
24 commissary too.

25 Q. Is it your experience that most of them drink

1 the bottled water that they either purchase at the
2 commissary or bring in on their own or that they drink
3 this water that may or may not have arsenic in it?

4 A. I've seen them do both, Jeff. And like I said,
5 you know, I know that they bring in bottled water, but
6 then like I said, I've seen people just get on the water
7 fountains there and drink all they can.

8 Q. Okay. Do you know how much the -- does your
9 water bill go up in the summer, do you know?

10 A. I don't know.

11 (Exhibit 13 marked for identification.)

12 MR. EDWARDS: I'll hand you Exhibit 13,
13 sir.

14 THE WITNESS: Okay.

15 MR. EDWARDS: Cynthia.

16 MS. BURTON: Thank you.

17 Q. (BY MR. EDWARDS) Did you ever try to buy water
18 from City of Navasota?

19 A. I know where you're going with this, and the
20 answer to me is no. But I read an article in the
21 newspaper and that's the extent of it. I don't know
22 nothing else about it.

23 Q. Who would know whether the -- someone from TDCJ
24 tried to buy water from the City of Navasota instead of
25 the water that it has in its wells here?

1 I, ROBERTO HERRERA, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted herein.

4

5

6

ROBERTO HERRERA

7

8 THE STATE OF _____)

9 COUNTY OF _____)

10 BEFORE ME, _____, on this
11 day personally appeared ROBERTO HERRERA, known to me (or
12 proved to me under oath of _____ or
13 through _____) (description of identity
14 card or other document) to be the person whose name is
15 subscribed to the foregoing instrument and acknowledged
16 to me that they executed the same for the purposes and
17 consideration therein expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, 2015.

20

21

22

23

NOTARY PUBLIC IN AND FOR

24

THE STATE OF _____

25

Commission expires: _____

1 COUNTY OF HARRIS)

2 STATE OF TEXAS)

3

REPORTER'S CERTIFICATION

4

5 I, Linda Rayburn, Certified Shorthand Reporter in
6 and for the State of Texas, hereby certify that the
7 witness was duly sworn and that this deposition is a true
8 record of the testimony given by the witness.

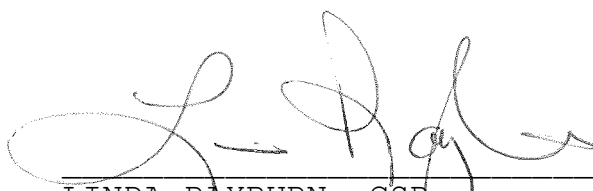
9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the
11 action in which this testimony was taken. Further, that
12 I am not a relative or employee of any attorney of record
13 in this cause, nor do I have a financial interest in the
14 action.

15 Subscribed and sworn to on this the 26th of
16 January, 2015.

17

18

19



20

LINDA RAYBURN, CSR
Integrity Legal Support Solutions
3100 W. Slaughter Lane, Suite A-101
Austin, Texas 78748
(512) 320-8690
(512) 320-8692 (fax)

21

22

23

24

25

1 COUNTY OF HARRIS)

2 STATE OF TEXAS)

3

4 REPORTER'S SUPPLEMENTAL CERTIFICATE

5

6 I hereby certify that the witness was notified on
7 _____ that the witness has 30 days (_____ days
8 per agreement of counsel) after being notified by the
9 officer that the transcript is available for review by
10 the witness and if there are changes in form or substance
11 to be made, then the witness will sign a statement
12 reciting such changes and the reasons given by the
13 witness for making them;

14 That the witness signature was/was not returned as of
15 _____.

16 Subscribed and sworn to on this the _____ day of
17 _____, 2015.

18

19

20 _____
LINDA RAYBURN, CSR
Integrity Legal Support Solutions
3100 W. Slaughter Lane, Suite A-101
21 Austin, Texas 78748
(512) 320-8690
22 (512) 320-8692 (fax)

23

24

25

Exhibit 25

Bryan Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

PWS/0930034/CO/09-19-2013/Exception

Texas Commission on Environmental Quality

Protecting Texas by Reducing and Preventing Pollution

September 19, 2013

Mr. Jayson Melcher, P.E.
Halff Associates, Inc.
12225 Greenville Avenue, Suite 200
Dallas, Texas 75243

Re: Exception Request to Use Innovative/Alternate Treatment
Pilot Study Report for an Arsenic Removal Treatment
Texas Department of Criminal Justice, Wallace Pack Unit - PWS No. 0930034
Grimes County, Texas

CN 601550650; RN 102314283

Dear Mr. Melcher:

On June 11, 2013, the Texas Commission on Environmental Quality (TCEQ) received your pilot study report with a cover letter, dated June 7, 2013, in support of an exception to use a coagulation/filtration process for arsenic removal at the Texas Department of Criminal Justice (TDCJ) Wallace Pack Unit. The proposed arsenic removal process is considered to be innovative/alternate treatment as defined in Title 30 of the *Texas Administrative Code* (30 TAC) §290.42(g). The protocol for this pilot study was approved by the TCEQ in a letter dated July 29, 2010. Based on the results of the pilot test, we are **unable to grant** your request to use the coagulation/filtration process at the above referenced public water system.

Areas of Concern

From our review of the pilot study results, the treatment process demonstrated arsenic removal to levels slightly above and slightly below the maximum contaminant level for arsenic. It may be possible to consistently achieve compliance with the maximum allowable arsenic levels with some adjustments to operating parameters. One possible solution would be adjustments in the blending ratio between Well No. 3 and Well No. 4 (this may also reduce the total dissolved solids levels). However, using the selected treatment process, post-treatment must be provided at this facility to provide water that is in compliance with minimum drinking water standards. As demonstrated during the pilot study, the optimum ferric chloride dose to provide the highest arsenic removal (1.35 milligrams per liter (mg/L)) also raised the iron levels in the effluent to above the maximum contaminant level for iron (0.3 mg/L). The effluent water from the pilot testing also revealed occasional elevated levels of manganese and total dissolved solids above the maximum secondary contaminant levels. While the pilot study was not designed to provide treatment for regulated contaminants other than arsenic, it was apparent that the ferric chloride addition was responsible for the elevated iron levels in the treated water.

Options

If the water system determines that the existing treatment equipment is still the best alternative for arsenic removal, we request that a new pilot study protocol be submitted to include post-treatment for iron/manganese removal. At a minimum, a successful pilot study must demonstrate consistent arsenic removal below the regulatory limit of 0.010 mg/L and also comply with the regulatory limits for iron and manganese of 0.3 and 0.05 mg/L, respectively, throughout the pilot study demonstration.

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • www.tceq.texas.gov

How is our customer service? www.tceq.texas.gov/goto/customersurvey

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As an alternative, the water system may choose to evaluate other treatment options. Consideration should be given to elevated total dissolved solids at Well No. 3 (although it appears that compliance can be achieved through blending with Well No.4). For any future pilot study, regardless of the selected treatment, we request that a pilot study protocol be submitted to the TCEQ for review and approval prior to starting the pilot study.

Compliance with TCEQ Regulations

From our review of the pilot study report, we noted that the water system failed to comply with the following TCEQ requirements:

- The full-scale treatment equipment was installed at this facility without TCEQ approval as required by 30 TAC §290.39(j).
- Water was sent to the distribution system during the pilot study. The approved pilot study protocol, dated July 29, 2010, stated that water from the treatment unit could not be sent to the distribution system (Item No. 1, page 1 of the July 29, 2010 TCEQ Protocol approval letter).

Should you have any questions or concerns regarding this letter, please feel free to contact Mr. David Williams at 512 239-0945, or at the letterhead address.

Sincerely,



David A. Williams, P.E.
Technical Review and Oversight Team
Public Drinking Water Section, MC-155
Water Supply Division



Ada Lichaa, P.G., Manager
Plan & Technical Review Section
Water Supply Division
Texas Commission on Environmental Quality

AL/DAW

cc: Ms. Debra Daugette, Environmental Manager, Texas Department of Criminal Justice,
P.O. Box 4011, Huntsville, TX 77342-4011
Mr. Mehdi Taheri, Water Enforcement Branch (6EN-W), U.S. EPA, Region 6, 1445 Ross Avenue,
Suite 1200, Dallas, Texas 75202-2733

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bcc: TCEQ Region 9 (Waco)

Exhibit 26

Mandatory Language for a Maximum Contaminant Level Violation
MCL, AVERAGE / ARSENIC

The Texas Commission on Environmental Quality (TCEQ) has notified the **TDCJ W PACK UNIT** water system that the drinking water being supplied to customers had exceeded the Maximum Contaminant Level (MCL) for arsenic. The U.S. Environmental Protection Agency (U.S. EPA) has established the MCL for arsenic at 0.010 milligrams per liter (mg/L) based on a running annual average, and has determined that it is a health concern at levels above the MCL. Analysis of drinking water in your community for arsenic indicates a compliance value **in quarter two 2012 of 0.028 mg/l for EP001.**

This is not an emergency. However, some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

You do not need to use an alternative water supply. However, if you have health concerns, you may want to talk to your doctor to get more information about how this may affect you.

We are taking the following action to address this issue: evaluation of the filtration system designed to remove arsenic from the drinking water supply below the MCL is underway; results to be discussed with the TCEQ.

Please share this information with all people who drink this water, especially those who may not have received this notice directly (i.e., people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

If you have questions regarding this matter, you may contact

TDCJ Pack Unit Maintenance
936-825-3728

Posted / Delivered on: August 27, 2012

Exhibit 27

**Mandatory Language for a Maximum Contaminant Level Violation
MCL, AVERAGE / ARSENIC**

The Texas Commission on Environmental Quality (TCEQ) has notified the **TDCJ W PACK UNIT** water system that the drinking water being supplied to customers had exceeded the Maximum Contaminant Level (MCL) for arsenic. The U.S. Environmental Protection Agency (U.S. EPA) has established the MCL for arsenic at 0.010 milligrams per liter (mg/L) based on a running annual average, and has determined that it is a health concern at levels above the MCL. Analysis of drinking water in your community for arsenic indicates a compliance value **in quarter one 2013 of 0.025 mg/l for EP001.**

This is not an emergency. However, some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

You do not need to use an alternative water supply. However, if you have health concerns, you may want to talk to your doctor to get more information about how this may affect you.

We are taking the following action to address this issue: Pilot Study on the Arsenic Removal System has been completed; results to be discussed with the TCEQ.

Please share this information with all people who drink this water, especially those who may not have received this notice directly (i.e., people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

If you have questions regarding this matter, you may contact

TDCJ Pack Unit Maintenance
936-825-3728

Posted / Delivered on: June 20, 2013

COPY

Exhibit 28



Texas Commission on Environmental Quality

Protecting Texas by Reducing and Preventing Pollution

CERTIFICATE OF DELIVERY OF PUBLIC NOTICE TO CUSTOMERS

Public Water System (PWS) name: **TDCJ W PACK UNIT**

PWS ID (7-digit number required): **0930034**

Type violation: **ARSENIC MCL, AVERAGE**

Time Period of violation: **first quarter of 2015**

The PWS named above has distributed the Public Notice (PN) for the type of violation and time period listed above by:

Mail or direct delivery, to bill-paying customers as required by 30 TAC §290.122(b)(2)(A) for community water systems; and

The information contained in this public notification is correct and complies with required public notification content in accordance with 30 TAC §290.122

and; Make an adequate good-faith effort to reach non-bill-paying consumers by appropriate methods. (check all below that apply):

- ☐ Posting the PN on the internet at www. _____
- ☐ Mailing the PN to postal patrons within the service area that do not receive a bill
- ☐ Advertising the PN in news media
- ☐ Publication of PN in local newspaper
- ☐ Posting the PN in public places
- ☐ Delivery of multiple copies to single bill addresses serving several persons
- ☐ Delivery to community organizations
- ☐ Email notification

Date of Delivery to Customers _____

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

Certified by: Name (print): _____ Title: _____
 Phone: _____ Email: _____
 Signature: _____ Date Signed: _____

Mail a copy of this completed form and a copy of the Public Notice that was delivered to your customers to:

TCEQ - Drinking Water Inventory & Enforcement Team
Attn: Public Notice (MC-155)
P. O. Box 13087
Austin, TX 78711-3087

**Mandatory Language for a Maximum Contaminant Level Violation
MCL, AVERAGE / ARSENIC**

The Texas Commission on Environmental Quality (TCEQ) has notified the TDCJ W PACK UNIT TX0930034 that the drinking water being supplied to customers had exceeded the Maximum Contaminant Level (MCL) for arsenic. The U.S. Environmental Protection Agency (U.S. EPA) has established the MCL for arsenic to be 0.010 milligrams per liter (mg/L) based on running annual average (RAA), and has determined that it is a health concern at levels above the MCL. Analysis of drinking water in your community for arsenic indicates a compliance value in quarter one 2015 of 0.024 mg/L for EP001.

This is not an emergency. However, some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

You do not need to use an alternative water supply. However, if you have health concerns, you may want to talk to your doctor to get more information about how this may affect you.

We are taking the following actions to address this issue:

<corrective actions>

Please share this information with all people who drink this water, especially those who may not have received this notice directly (i.e., people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

If you have questions regarding this matter, you may contact _____ at

<water system official's name>

<area code + phone number>

Posted /Delivered on:

<Date Posted>

Instructions for preparing the required Public Notice:

Recopy the mandatory language above and insert the underlined information in the spaces indicated.

Public Notice delivery timelines:

The initial public notice shall be issued as soon as possible, but in no case later than 90 days after the violation was identified. Repeat public notice shall be issued every 90 days for as long as the violation persists. All notifications require the attached Certificate of Delivery due 10 days from the posting date of the above notice.

Refer to 30 TAC §290.122 for additional information on Public Notification.